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JUSTICES OF THE PEACE REVIEW COUNCIL

ONTARIO

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The Honourable Lise Maisonneuve

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Chair, Justices of the Peace Review Council

JUSTICES OF THE PEACE REVIEW COUNCIL

September 30, 2016

The Honourable Yasir Naqvi
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Minister:

It is my pleasure to submit the Ninth Annual Report of the Justices of the Peace Review Council concerning its operations throughout 2015, in accordance with subsection 9(7) of the *Justices of the Peace Act*.

The period of time covered by this Annual Report is from January 1, 2015 to December 31, 2015.

Respectfully submitted,

Lise Maisonneuve

Lise Maisonneuve
Chief Justice
Ontario Court of Justice

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INTRODUCTION

The period of time covered by this Annual Report is from January 1, 2015 to December 31, 2015. This report is the Ninth Annual Report on the work of the Justices of the Peace Review Council.

The Council is an independent body established by the Province of Ontario under the *Justices of the Peace Act* with a mandate to receive and investigate complaints about the conduct of justices of the peace and to fulfill other functions as described in this report. The Review Council does not have the power to interfere with cases before the courts or to change a decision made by a justice of the peace. Those are matters to be pursued through other legal remedies before the courts.

The *Act* provides for the Council to make an Annual Report to the Attorney General on its affairs, including case summaries about complaints. The report may not include information that identifies a justice of the peace, a complainant or a witness unless a public hearing has occurred.

This Ninth Annual Report of the Review Council provides information on its membership, its functions and the work of the Council during 2015. The Annual Report also includes information on the procedures used to address complaints. Information is also included on applications for approval to engage in extra-remunerative activities, although names of applicants are confidential.

Justices of the peace play an important role in the administration of justice in Ontario. They are appointed by the Province of Ontario and have their duties assigned by a Regional Senior Justice or a Regional Senior Justice of the Peace. They routinely conduct trials under the *Provincial Offences Act* and preside over bail hearings. They also perform a number of other judicial functions, such as issuing search warrants. Justices of the peace do difficult, important work in the justice system. A justice of the peace may be the only judicial officer that a citizen will encounter in his or her lifetime.

The Review Council had jurisdiction over approximately 389 provincially-appointed justices of the peace, full-time and part-time and *per diem,* during the period of time covered by this Annual Report. In 2015, they presided over millions of provincial offences matters, such as traffic tickets, as well as bail hearings, Intake Court and assignment courts. During 2015, the Council received 40 new complaints about justices of the

peace, and carried over 21 from previous years. Information about the 39 files where the complaint files were completed and closed in 2015 is included in this Report. Public hearings held by the Review Council are contained in the Appendices. We invite you to find out more about the Review Council by reading this Annual Report, and by visiting its website at **www.ontariocourts.on.ca/jprc/en/.** On the website, you will find the Council's current policies and procedures; updates about any public hearings that are in progress or that have been completed after this Report was prepared; the *Principles of Judicial Office;* the Education Plan; and links to the governing legislation.

1. COMPOSITION AND TERMS OF APPOINTMENT

The Justices of the Peace Review Council is an independent body established under the *Justices of the Peace Act.* The Review Council has a number of functions which are described in this section, including the review and investigation of complaints about the conduct of justices of the peace.

The Review Council includes judges, justices of the peace, a lawyer and four community representatives:

- the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice;
- the Associate Chief Justice Co-ordinator of Justices of the Peace;
- three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice;
- one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada; and,
- four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

In the appointment of community members, the importance is recognized of reflecting, in the composition of the Review Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance.

The lawyer and community members who are appointed to the Council hold office for four-year terms and are eligible for reappointment. Judicial members on the Council are appointed by the Chief Justice of the Ontario Court of Justice.

2. MEMBERS

The membership of the Review Council in the year covered by this report (January 1, 2015 to December 31, 2015) was as follows:

Judicial Members:

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Lise Maisonneuve ..... (Ottawa)
(Effective May 4, 2015)

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Annemarie E. Bonkalo ..... (Toronto)
(Until May 3, 2015)

ASSOCIATE CHIEF JUSTICE CO-ORDINATOR OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

The Honourable Faith Finnestad ..... (Toronto)

THREE JUSTICES OF THE PEACE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

His Worship Bruce Leaman ..... (Thunder Bay)
(Effective January 5, 2015)

Her Worship Liisa Ritchie ..... (Halton)
(Effective February 2, 2015)

Her Worship Monique Seguin ..... (Sudbury)

TWO JUDGES OF THE ONTARIO COURT OF JUSTICE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

The Honourable Justice Esther Rosenberg ..... (Peterborough)

The Honourable Justice Jean Legault ..... (L'Orignal)
(Effective February 9, 2015)

REGIONAL SENIOR JUSTICE OF THE PEACE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

Regional Senior Justice of the Peace Warren Ralph ..... (Toronto)

Lawyer Member:

Ms. S. Margot Blight ..... (Toronto)
Borden Ladner Gervais LLP

Community Members:

Dr. Emir Crowne ..... (Windsor)
Associate Professor, Faculty of Law, University of Windsor
(Re-appointed, effective May 29, 2015)

Ms. Cherie Daniels ..... (Toronto)
Lawyer
(Until May 1, 2015)

Ms. Jenny Gumbs ..... (Toronto)
Former Honorary Consul General to Canada for Grenada
(Effective September 8, 2015)

Dr. Michael S. Phillips ..... (Gormley)
Consultant, Mental Health and Justice

Ms. Leonore Foster ..... (Kingston)
Former Councillor of the City of Kingston

Members – Temporary:

Subsection 8(10) of the *Justices of the Peace Act* permits the Chief Justice of the Ontario Court of Justice to appoint a judge or a justice of the peace to be a temporary member of the Justices of the Peace Review Council of a complaints committee or hearing panel where it is necessary in order to meet the requirements of the *Act*. During the period covered by this report, the following members were temporary members:

Her Worship Kathleen Bryant ..... (Sault Ste. Marie)

The Honourable Justice Ralph Carr..... (Timmins)

His Worship Michael Cuthbertson ..... (Guelph)

The Honourable Justice Jean Legault ..... (L'Orignal)

The Honourable Justice Deborah K. Livingstone ..... (London)

The Honourable Justice Charlie Vaillancourt ..... (Toronto)

Senior Advisory Justice of the Peace Bernard Swords ..... (Ottawa)

3. ADMINISTRATIVE INFORMATION

Office space is shared by both the Ontario Judicial Council and the Justices of the Peace Review Council. The Councils make use of financial, human resources, and technology support staff in the Office of the Chief Justice, as needed, and computer systems without the need of acquiring a large staff.

Councils' offices are used for meetings of both Councils and their members, and as needed for meetings with judicial officers that may result as part of the disposition of complaints. The Councils have a shared telephone reception and fax number. They share a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

During the period covered by this report, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a Registrar, two Assistant Registrars and an Administrative Assistant:

Ms. Marilyn E. King, LL.B. – *Registrar*

Ms. Michelle M. Boudreau – *Assistant Registrar*

Ms. Ana M. Brigido – *Assistant Registrar*

Ms. Claudia Cammisa – *Administrative Assistant*
(Effective November 2, 2015)

Ms. Janice Cheong – *Administrative Assistant*
(Until February 20, 2015)

Ms. Ingrid Richards – *Administrative Assistant*
(Effective February 23 to August 14, 2015)

4. FUNCTIONS OF THE REVIEW COUNCIL

The *Justices of the Peace Act* provides that the functions of the Review Council are:

- to establish complaints committees from amongst its members to receive and investigate complaints about justices of the peace, and decide upon dispositions under section 11(15);
- to hold hearings under section 11.1 when hearings are ordered by complaints committees pursuant to section 11(15);
- to review and approve standards of conduct;
- to consider applications under section 5.2 for the accommodation of needs;
- to deal with continuing education plans; and,
- to decide whether a justice of the peace who applies for approval to engage in other remunerative work may do so.

The Review Council does not have the power to interfere with a court case or to change a decision made by a justice of the peace. If a person believes that a justice of the peace made an error in assessing evidence or in making a decision on any of the issues, the proper way to proceed is through other legal remedies before the courts, such as an appeal.

Under section 10(1) of the *Justices of the Peace Act*, the Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council must make the rules available to the public. The Review Council has established procedures containing rules for the complaints process which are posted on its website at the link for "Policies and Procedures" at **www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/.**

During 2015, the Council continued to refine and develop its procedures and policies.

The members considered what information should be public when a justice of the peace requests that a Hearing Panel make a recommendation under section 11.1(17) to the Attorney General that he or she should be compensated for his or her legal expenses incurred in connection with a hearing. Historically, the amount and details of the request by the justice of the peace were treated as confidential. The Council noted that if a justice of the peace is asking for public funds to pay his or her legal expenses, he or she owes an explanation of what the money is being used for. The members concluded that if a hearing is public, any request for compensation for legal costs incurred by the justice of the peace for that hearing should be public. The Review Council adopted the following into its procedures:

> The Review Council's consideration of the question of compensation shall take place in public if there was a public hearing into the complaint, and otherwise shall take place in private.

The Review Council noted that former Justice of the Peace Errol Massiah had filed an application for judicial review of the decisions made by the Hearing Panel during the hearing into the complaint made about his conduct. The members decided that to keep the public fully informed of the full process arising from a complaint of judicial misconduct, the information should be posted on its website about an application for judicial review. Brief information is now included on the website to inform the public when a judicial review has been commenced and of the decision that results.

A copy of the Council's current procedures for the complaints process that incorporates the amendments made during 2015 is posted on the Review Council's website under the link "Policies and Procedures at **www.ontariocourts.ca/ocj/jprc/policies-and-procedures/ procedure/.**

5. EDUCATION PLAN

The Associate Chief Justice Co-ordinator of Justices of the Peace of the Ontario Court of Justice is required, by section 14 of the *Justices of the Peace Act,* to establish, implement and make public a plan for the continuing judicial education of justices of the peace. The education plan must be approved by the Justices of the Peace Review Council. In 2007, a continuing education plan was developed by the Associate Chief Justice Co-ordinator of Justices of the Peace in conjunction with the Advisory Committee on Education. The Committee includes the Associate Chief Justice Co-ordinator of Justices of the Peace as Chair *(ex officio)* and justices of the peace nominated by the Associate Chief Justice Co ordinator of Justices of the Peace and by the Association of Justices of the Peace of Ontario. In 2012, the Council was informed by the Associate Chief Justice Co-ordinator of Justices of the Peace that the Court had retained Ms. Susan Lightstone to do a review of justice of the peace education programs and provide the Court with a report on judicial education. Ms. Lightstone has worked with the National Judicial Institute which provides education for federally appointed judges across the country.

In 2013, the Council was presented with the Education Plan in which seven weeks of Intensive Workshops had been expanded to nine and a half weeks under the guidance and advice of Ms. Lightstone. The Education Plan was approved by the Justices of the Peace Executive Committee (JPEC) and was approved by the Council on May 28, 2013.

A copy of the current Education Plan can be found on the Council's website under the link "Education Plan" at **www.ontariocourts.ca/ocj/jprc/education-plan/.**

6. STANDARDS OF CONDUCT

The Associate Chief Justice Co-ordinator of Justices of the Peace may, under section 13(1) of the *Justices of the Peace Act,* establish standards of conduct for justices of the peace and a plan for bringing the standards into effect and must implement the standards and plan when they have been reviewed and approved by the Review Council.

Further to section 13(1), the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* were approved by the Justices of the Peace Review Council on December 7, 2007. The principles set out standards of excellence and integrity to

which justices of the peace subscribe. These principles are not exhaustive. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in their conduct generally.

The principles are advisory in nature. A breach does not automatically lead to a conclusion that there has been misconduct. However, the principles do set out a general framework of values and considerations that are relevant in evaluating allegations of improper conduct by a justice of the peace.

A copy of the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* is included as Appendix C in this Annual Report and can be found on the Council's website under the link for "Principles of Judicial Office" at **www.ontariocourts.ca/ocj/jprc/principles-of-judicial-office/.**

7. EXTRA-REMUNERATIVE WORK

Under section 19 of the *Justices of the Peace Act,* all justices of the peace are required to seek the written approval of the Review Council before accepting or engaging in any extra-remunerative work.

Applications received from justices of the peace to engage in other remunerative work are considered in accordance with the Council's policy. The policy applies to all justices of the peace, full-time and part-time and *per diem.* The policy sets out criteria that are used in assessing applications including:

- whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought;
- whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned; and,
- whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

The Council considers two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's extra-remunerative policy are considered.

One criterion to be considered by the Council in considering applications is whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality (paragraph 6(c) of the *Policy Re Extra-Remunerative Work*). The Council has considered how that criterion should be applied and determined that it must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act,* 2006, S.O. 2006, c. 21. The legislative amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act,* 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice,* the Review Council determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work. The *Policy Re Extra-Remunerative Work* was amended to reflect the Council's decision.

The Review Council has approved some applications by full-time justices of the peace to engage in extra-remunerative work on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's policy and procedure, an applicant who seeks approval to engage in commercial activity must address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

In 2015, the Council received an enquiry from a justice of the peace asking whether she should make an application for approval to engage in extra-remunerative work in relation to her ownership of a vacation property. She indicated that she had purchased a condominium with the intention of having a vacation property for her retirement years. She renovated the property and incurred expenses in so doing. To defray carrying costs and to cover some of the renovation expenses, she hired a rental agent to rent out the property. The members concluded that rental income does not qualify as income from extra-remunerative work insofar as it is strictly investment income. Simple ownership of rental property without further involvement does not constitute extra-remunerative work.

The *Policy on Extra-Remunerative Work* is included as Appendix B in this Annual Report. The most recent version is posted on the Council's website under the link "Policies and Procedures" at **www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/.**

Summary of Extra-Remunerative Files Closed in 2015

During 2015, the Council received four applications for approval to engage in extra-remunerative work and completed its consideration of two of those applications. Case summaries for the extra-remunerative files that were completed in 2015 can be found at Appendix B in this Annual Report.

8. COMMUNICATIONS

The website of the Justices of the Peace Review Council includes information about the Council, including the most current version of the policies and procedures, as well as information about hearings that are underway or that have been completed. Information on ongoing hearings is available under the link "Public Hearings" at **www.ontariocourts.ca/ocj/jprc/public-hearings/.** Decisions made during the hearings are posted under the link "Public Hearings Decisions" at **www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/.** Each Annual Report of the Council is also available on the website after it has been tabled in the legislature by the Attorney General.

The address of the Council's website is: **www.ontariocourts.ca/ocj/jprc/.**

A brochure to inform the public about the process to make complaints about judges and justices of the peace is available in hard copy at courthouses or by contacting the Council's office, and electronically on the website at **www.ontariocourts.ca/ocj/conduct/do-you-have-a-complaint/.** The brochure, "Do You Have a Complaint?" provides information on what a justice of the peace does, on how to tell whether the presiding judicial officer is a judge or a justice of the peace, and on how to make a complaint about conduct.

9. ACCOMMODATION OF NEEDS ARISING FROM A DISABILITY

A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Council under section 5.2 of the *Justices of the Peace Act* for an order that such needs be accommodated.

The Ministry of the Attorney General, with input from the Office of the Chief Justice, has a process that provides a consistent means for judicial officers to request accommodation of needs arising from disabilities. The Council recognizes that the Ministry has access to the expertise and resources to properly assess and address requests for accommodation of needs. In order that the Council can properly consider applications made to it, if any, the Council's Procedures require the applicant justice of the peace to first exhaust the accommodation of needs process that is available for judicial officers through the Ministry of the Attorney General. When that process has been completed, if the justice of the peace makes an application to the Council, he or she must provide a copy of all documents, medical evidence and decisions resulting from the application process.

The current procedure that governs such applications is included in the Council's Procedure which is posted on the website at **www.ontariocourts.ca/ocj/jprc/accessibility-and-accommodation/.**

During 2015, no applications for accommodation were received by the Council.

10. OVERVIEW OF THE COMPLAINTS PROCESS

What initiates a review by the Review Council?

Any person may make a complaint to the Review Council about the conduct of a justice of the peace. Complaints must be made in writing. The governing legislation and the principles of natural justice do not provide for the Review Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Review Council must be in response to specific allegations submitted by a complainant. Most of the complaints received by the Justices of the Peace Review Council are received from members of the public.

Does the Council have the legal authority to consider the complaint?

The Review Council has a legislative mandate to review complaints about the conduct of justices of the peace. The Council has no authority to review decisions of justices of the peace to determine whether there were any errors in how the issues were determined or how conclusions were drawn. If a party involved in a court case thinks that a justice of the peace reached the wrong decision in the case, he or she has legal remedies through the courts. Only a court can change the original decision of a justice of the peace.

All correspondence is reviewed to determine whether or not a complaint is within the jurisdiction of the Review Council. In those cases where the complaint may be within the jurisdiction of the Review Council, a complaint file is opened and a letter of acknowledgement is sent to the complainant, usually within a week of his or her letter being received by the Council.

If the complainant expresses dissatisfaction with a decision that has been made by a justice of the peace, the letter of acknowledgement advises the complainant that the Council has no power to change a decision made by a justice of the peace. In such cases, the complainant is advised that he or she may wish to consult legal counsel to determine what, if any, remedies may be available through the courts.

If an individual is complaining about his/her lawyer or a Crown Attorney, or another office, the complainant is generally referred to the appropriate agency or authorities.

What happens in the complaints process?

The *Justices of the Peace Act* and the procedures that have been established by the Council provide the current framework for addressing complaints about justices of the peace. If a complaint is ordered to a public hearing, certain provisions of the *Statutory Powers Procedure Act* also apply. The complaints procedure is outlined below. The current procedures are posted on the Council's website at **www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/.**

Preliminary Investigation and Review

As soon as possible after receiving a complaint about the conduct of a justice of the peace, the office of the Council will acknowledge receipt of the complaint. If the complaint raised allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

If there is no on-going court proceeding, a complaints committee of the Council will be assigned to investigate the complaint. Members of the Council serve on complaints committees on a rotating basis. Each complaints committee is composed of: a provincially appointed judge who acts as chair; a justice of the peace; and, either a community member or a lawyer member. Complaints are not generally assigned to members from the same region where the justice of the peace who is the subject of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of Council and the justice of the peace.

Except for hearings ordered under section 11(15)(c) of the *Justices of the Peace Act* to consider complaints about specific justices of the peace, meetings and proceedings of the Review Council are not held in public. Section 11(8) of the *Act* requires that investigations by the Review Council must be conducted in private. The legislative framework recognizes the need to safeguard judicial independence while simultaneously ensuring judicial accountability and public confidence in the administration of justice.

If the complaint arose from a court proceeding, usually a transcript of the court hearing is ordered to be reviewed by the members of the complaints committee. An audio recording, if available, may also be ordered and reviewed. In some cases, the committee may find that it is necessary to conduct further investigation in the form of having witnesses interviewed. An external lawyer may be retained, pursuant to section 8(15) of the *Act,* to assist the committee by interviewing witnesses and providing transcripts of the interviews to the investigating complaints committee. Legal advice may also be provided.

The complaints committee will determine whether or not a response to the complaint should be invited from the justice of the peace in question. If a response is invited from the justice of the peace, the letter sent inviting a response will enclose a copy of the complaint, the transcript (if any) and all of the relevant materials considered by the committee. The justice of the peace may seek independent legal advice or assistance before responding. The justice of the peace will also be invited to listen to the audio recording, if it has been reviewed by the committee.

Section 11(15) of the *Justices of the Peace Act* gives the complaints committee the authority to dismiss a complaint after reviewing the complaint where, in the opinion of the committee: it is frivolous or an abuse of process; it falls outside the Council's jurisdiction (e.g. because it is a complaint about the exercise of judicial discretion); it does not include an allegation of judicial misconduct; the allegation is unproven; or, the misconduct does not rise to the level of misconduct that requires further action on the part of the Council.

Interim Recommendations

The investigating complaints committee will consider whether the allegation(s) warrants making an interim recommendation pending the final disposition of a complaint. Under section 11(11) of the *Act,* an interim recommendation for non-assignment of work or re-assignment to work at another court location may be made to the Regional Senior Justice appointed for the region to which the justice of the peace is assigned. The Regional Senior Justice may decide not to assign work to the justice of the peace until the final disposition (but he or she will continue to be paid); or, with the consent of the justice of the peace, may re-assign him or her to another location until the disposition of the complaint. It is within the discretion of the Regional Senior Justice as to whether he or she decides to act upon the recommendation from a complaints committee.

The Review Council has approved the following criteria in the procedures to guide complaints committees as to when an interim recommendation should be made:

- where the complaint arises out of a working relationship between the complainant and the justice of the peace and the complainant and the justice of the peace both work at the same court location;
- where allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute;
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies;
- where it is evident to the complaints committee that a justice of the peace is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

Where a complaints committee proposes to recommend temporarily not assigning work or re-assigning a justice of the peace to work at a different court location, it may give the justice of the peace an opportunity to be heard on that issue in writing before making its decision. Particulars of the factors upon which the complaints committee's recommendations are based are provided to the Regional Senior Judge to assist the Regional Senior Judge in making his or her decision, and to the justice of the peace to provide him or her with notice of the complaint and the complaints committee's recommendation.

Of the files closed in 2015, three complaints committees recommended that a justice of the peace be non-assigned pending the final disposition of the complaints. One complaints committee recommended to the Regional Senior Justice that a justice of the peace be temporarily reassigned to a different location pending the final disposition of the complaint.

Dispositions of the Complaints Committee

When the investigation is completed, pursuant to section 11(15) of the *Act,* the complaints committee will do one of the following:

a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;

b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;

c) order that a formal hearing into the complaint be held by a hearing panel; or,

d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

The complaints committee reports to the Review Council on its decision and, except where it orders a formal hearing, does not identify the complainant or the justice of the peace who is the subject of the complaint in its report.

Notification of Disposition

After the complaints process is completed, the Review Council communicates its decision to the person who made the complaint and, in most cases, to the justice of the peace. A justice of the peace may waive notice of the complaint if it is being dismissed and no response was invited by the Council. In accordance with the Procedures of the Review Council, if the Review Council decides to dismiss the complaint, it will provide brief reasons.

Public Hearing Under section 11.1

When the complaints committee orders a public hearing, under section 11.1(1) of the *Act,* the Chief Justice of the Ontario Court of Justice, who is also the Chair of the Review Council, establishes a three-member hearing panel from among the members of the Council, composed of: a provincially appointed judge who chairs the panel; a justice of the peace; and, a lawyer or a member of the public. Complaints committee members who participated in the investigation of the complaint do not participate in its review by a hearing panel.

The legislation provides for judicial members to be appointed as temporary members of the Council to ensure that the three members of the hearing panel have not been involved in earlier stages of reviewing the complaint. The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a hearing panel where necessary to form each quorum to meet the requirements of the *Act.*

By the end of the investigation and hearing process, all decisions regarding complaints made to the Justices of the Peace Review Council will have been considered and reviewed by a total of six members of the Council – three members of the complaints committee and three members of the hearing panel.

The Review Council engages legal counsel, called Presenting Counsel, for the purposes of preparing and presenting the case about the justice of the peace. The legal counsel engaged by the Review Council operates independently of the Review Council. The duty of legal counsel engaged to act as Presenting Counsel is not to seek a particular order against a justice of the peace, but to see that the complaint about the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result.

The justice of the peace has the right to be represented by counsel, or to act on his or her own behalf in any hearing under this procedure.

The *Statutory Powers Procedure Act,* with some exceptions, applies to hearings into complaints. Persons may be required, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the panel which are relevant to the subject matter of the hearing and admissible at the hearing.

Public Hearing Unless Ordered Private

A section 11.1 hearing into a complaint is public unless the Review Council determines, in accordance with criteria established under the *Statutory Powers Procedure Act,* that matters involving public security may be disclosed; or, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of such matters, in the interests of any person affected or in the public interest, outweighs the desirability of following the principle that the hearing be open to the public.

In certain circumstances where a complaint involves allegations of sexual misconduct or sexual harassment, the Review Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness who testifies to having been the victim of the conduct. If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel will, at the request of the complainant

or of a witness who testifies to having been the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

Dispositions after section 11.1 Hearing

After hearing the evidence, under section 11.1(10) of the *Justices of the Peace Act*, the hearing panel of the Review Council may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may decide upon any one of the following sanctions singly or in combination:

- warn the justice of the peace;
- reprimand the justice of the peace;
- order the justice of the peace to apologize to the complainant or to any other person;
- order the justice of the peace to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace; suspend the justice of the peace with pay, for any period; or,
- suspend the justice of the peace without pay, but with benefits, for a period up to thirty days.

Removal from Office

Following the hearing, the Review Council may make a recommendation to the Attorney General that the justice of the peace be removed from office. This sanction stands alone and cannot be combined with any other sanction. A justice of the peace may be removed from office only if a hearing panel of the Review Council, after a hearing under section 11.1, recommends to the Attorney General under section 11.2 that the justice of the peace be removed on the ground of:

- he or she has become incapacitated or disabled from the execution of his or her office by reason of inability to perform the essential duties of the office because of a disability and, in the circumstances, accommodation of his or her needs would not

remedy the inability, or could not be made because it would impose undue hardship to meet those needs;

- conduct that is incompatible with the execution of the office; or
- failure to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the justice of the peace from office.

Recommendation of Compensation for Legal Costs

When the Justices of the Peace Review Council has dealt with a complaint, section 11(16) of the *Justices of the Peace Act* makes provision for a justice of the peace to request that a complaints committee recommend to the Attorney General that he or she should be compensated for all or part of the costs of legal services incurred in connection with the investigation. Such a request would generally be submitted to the Council after the complaints process has been completed, along with a copy of the statement of account of legal services to support the request. Similarly, section 11.1(17) allows a hearing panel to recommend compensation for part of the cost of legal services incurred in connection with a hearing.

In 2015, nine recommendations for compensation were made by complaints committees to the Attorney General that the justices of the peace be compensated for all or part of the cost of legal services incurred in connection with the investigation of the complaints. Two hearing panels recommended that the justices of the peace (former Justices of the Peace Spadafora and Whittaker) be compensated for part of the cost of legal services incurred in connection with the hearing process. One hearing panel declined to grant a request by the justice of the peace (former Justice of the Peace Massiah) for a recommendation that he should be compensated for the legal costs of the hearing. The decisions of each of those hearing panels are included in Appendices "D", "E" and "F" in this Annual Report.

Legislation

The current legislative provisions of the *Justices of the Peace Act* concerning the Justices of the Peace Review Council are available on the government's e-laws website at **www.e-laws.gov.on.ca.** The website contains a database of Ontario's current and historical statutes and regulations.

11. SUMMARY OF COMPLAINTS CLOSED IN 2015

Overview

The Justices of the Peace Review Council carried forward 21 complaints to 2015 from previous years. During 2015, 40 new complaint files were opened with the Review Council. Including those cases carried into 2015 from previous years, the total number of files open during 2015 was 61. Of the 61 open files in 2015, 39 files were completed and closed before December 31, 2015.

Of the 39 files that were closed, two files were opened in 2011, five in 2013, 14 in 2014 and 18 in 2015. Both complaints from 2011 resulted in hearings, one in relation to the conduct of former Justice of the Peace Errol Massiah and one in relation to the conduct of former Justice of the Peace Santino Spadafora. The complaint about His Worship Spadafora was held in abeyance pending the completion of a criminal process. The complaints process reactivated once the criminal process concluded. The complaint about His Worship Massiah was held in abeyance pending the completion of a hearing arising from a different complaint about his conduct.

Twenty-two complaints that were received in 2015 were still ongoing at the end of the year and were carried over into 2016.

Dispositions

As indicated earlier, section 11(15) of *the Justices of the Peace Act* authorizes a complaints committee to:

- dismiss the complaint if it was frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
- order that a formal hearing into the complaint be held by a hearing panel; or,
- refer the complaint to the Chief Justice of the Ontario Court of Justice.

Of the 39 files addressed and closed, 12 complaints were dismissed by the Review Council under section 11(15)(a) on the basis that they were found to be outside of the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a justice of the peace's decision, but who made no allegation of misconduct. While the decisions made by the justice of the peace in these cases could be the subject of other legal remedies, such as an appeal, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Review Council.

Complaints within the jurisdiction of the Council included allegations such as improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias.

Fifteen complaints were dismissed by the Review Council under section 11(15)(a) after they were investigated by a complaints committee and determined to be unsubstantiated or unfounded or the behaviour did not amount to judicial misconduct.

In two cases, the Review Council provided advice in writing to justices of the peace under section 11(15) (b) of the *Act*.

In 2015, two complaints were referred to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15)(d) of the *Act*. A complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the committee

is of the opinion that the conduct complained of does not warrant another disposition and that there is some merit to the complaint. As well, the committee is of the view that a referral to the Chief Justice is a suitable means of informing the justice of the peace that his or her course of conduct was not appropriate in the circumstances that led to the complaint. The committee may recommend imposing conditions on its referral to the Chief Justice where the committee agrees that there is some course of action or remedial training of which the justice of the peace could take advantage and the justice of the peace agrees.

Hearings processes were underway in relation to the conduct of three justices of the peace at the beginning of 2015: His Worship Santino Spadafora (one complaint); His Worship Robert Whittaker (six complaints); and, His Worship Errol Massiah (one complaint). A public hearing will be ordered pursuant to section 11(15)(c) where the complaints committee is of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. When a hearing is ongoing, updates on the status of the case are posted on the Review Council's website. At the end of a hearing, the decision can be found on the website under the link "Public Hearings Decisions" at **www.ontariocourts.on.ca/jprc/en/hearings/.**

His Worship Spadafora and His Worship Whittaker retired before evidence was called in their hearings. In both cases, they were no longer justices of the peace and the Review Council administratively lost jurisdiction over the complaints. The decisions from the Hearing Panels are included in this Annual Report in Appendix "D" and "E" respectively.

At the conclusion of the hearing into the complaint about the conduct of His Worship Massiah, the Hearing Panel recommended to the Attorney General that His Worship be removed from office. The decision of the Hearing Panel is included in Appendix "F" in this Annual Report. He filed an application for judicial review of the decisions made by the Hearing Panel during the hearings process. An update on the outcome of the judicial review will be posted on the Council's website after the judicial review has concluded.

Types of Cases

Of the 39 files that were completed and closed, 21 complaints arose from events during provincial offences proceedings, four arose from matters in Intake Court, and eleven arose from proceedings under the *Criminal Code* (two from set-date court, five bail hearings, four pre-enquêtes), and three related to conduct outside of the courtroom.

Case Summaries

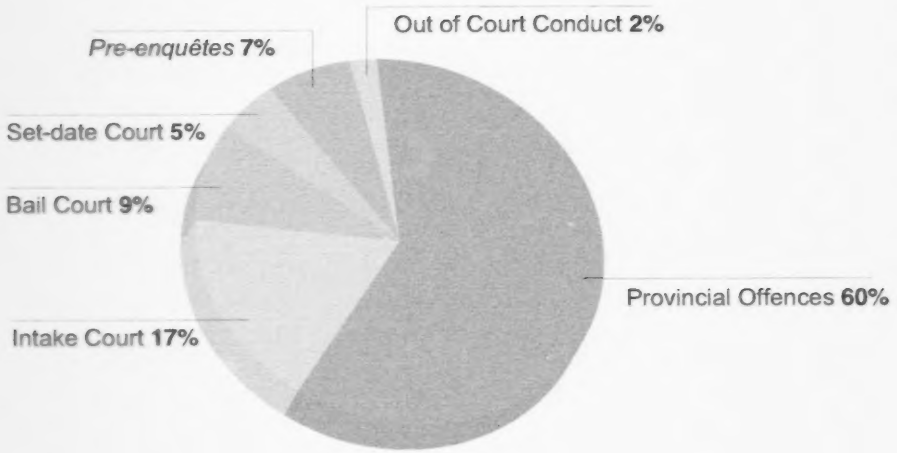
Case summaries for each complaint file closed during 2015 follow in Appendix "A" of this Report.

SUMMARY OF COMPLAINTS CLOSED IN 2015

DISPOSITIONS ON COMPLAINTS CLOSED IN 2015	
Dismissed as out of jurisdiction	12
Dismissed as not substantiated or did not amount to misconduct	15
Advice Letter	2
Advice - In-person	0
Referred to Chief Justice	2
Loss of jurisdiction	0
Public Hearing (in relation to three justices of the peace; one hearing was into six complaints about one justice of the peace)	8
TOTAL CLOSED IN 2015	39

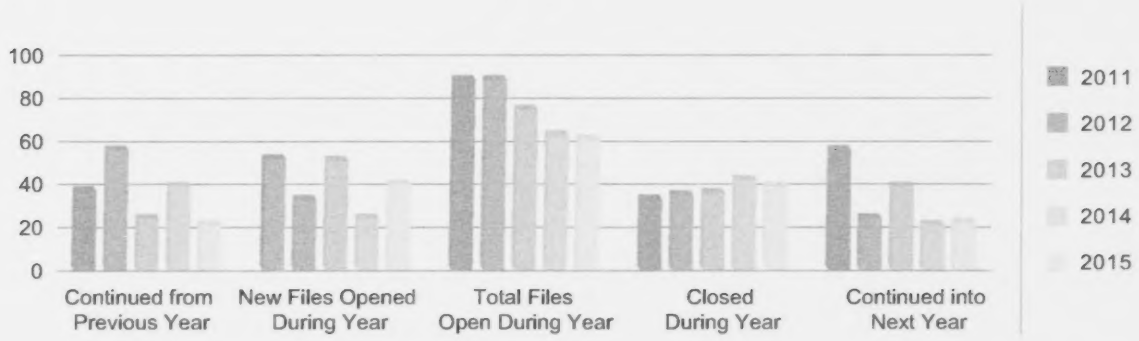
TYPES OF CASES CLOSED IN 2015

TYPES OF CASES	# OF COMPLAINTS
Provincial Offences Court	21
Intake Court	4
Bail Court	5
Set-date Court	2
Pre-enquêtes	4
Peace Bond Applications	0
Out of Court Conduct	3
Total	39



CASELOAD IN CALENDAR YEARS

	2011	2012	2013	2014	2015
Continued From Previous Years	37	56	24	39	21
New Files Opened During Year	52	33	51	24	40
Total Files Open During Year	89	89	75	63	61
Closed During Year	33	65	36	42	39
Continued into Next Year	56	24	39	21	22



APPENDIX A

2015
CASE SUMMARIES

APPENDIX A

Case Summaries

A

Complaint files are given a two-digit prefix indicating the complaint year, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., Case No. 26-001/15 was the first file opened in the 26th complaint year and opened in calendar year 2015).

Except where a public hearing was ordered, details of each complaint for which the complaints process was completed, with identifying information removed as required by the legislation, are provided below. Decisions on public hearings are provided in other appendices in this Annual Report.

CASE NO. 22-034/11

Pursuant to section 11(15) of the *Justices of the Peace Act,* after completing an investigation of a complaint, a complaints committee ordered a formal hearing into one complaint about the conduct of Justice of the Peace Santino Spadafora.

Under the Council's Procedures, a committee will order a hearing where there has been an allegation of judicial misconduct that the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct.

The hearing was scheduled to commence on November 24, 2014. On November 13, 2014, His Worship submitted a letter confirming his full retirement, effective January 31, 2015. Given that the Council would lose jurisdiction upon his retirement, the hearing dates were vacated and the Hearing Panel adjourned the matter *sine die*. Subsequently, His Worship Spadafora wrote to then Chief Justice Annmarie E. Bonkalo and requested permission to withdraw his letter of retirement. The Chief Justice exercised her discretion in favour of that request and allowed the retirement letter to be withdrawn.

Presenting Counsel promptly filed a motion to reinstate the proceedings as soon as reasonably possible. New hearing dates were scheduled to commence on March 30, 2015. His Worship retired on January 31, 2015, the Panel lost jurisdiction over the hearing and the dates were vacated. A decision of the Hearing Panel is included in this Report in Appendix "D".

Case Summaries

CASE NO. 22-041/11

Pursuant to section 11(15) of the *Justices of the Peace Act,* after completing its investigation of a complaint, a complaints committee ordered a formal hearing into one complaint about the conduct of Justice of the Peace Errol Massiah.

Under the Council's Procedures, a committee will order a hearing where there has been an allegation of judicial misconduct that the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct.

The hearing commenced on July 4, 2013 and concluded on April 28, 2015. Decisions on motions heard by the Hearing Panel during the proceedings and the final decisions in the matter are posted on the Council's website at **www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/** under the years 2013, 2014 and 2015. The Panel's decision to recommend removal from office and its decision against recommending compensation of His Worship's legal costs are included in Appendix "F" in this Report.

Following the hearing, His Worship was removed from office. He subsequently filed an application for judicial review. At the time of the report, the judicial review had not been heard. An update will be posted on the Council's website after the Court has issued its decision on the application.

CASE NO. 24-013/13, 24-040/13, 25-042/13, 25-004/14, 25-007/14 AND 25-011/15

The complaints committee investigated six complaints about the conduct of one justice of the peace. Pursuant to section 11(15) of the *Justices of the Peace Act,* the Justices of the Peace Review Council ordered a formal hearing into all six complaints about the conduct of Justice of the Peace Robert Whittaker.

Under the Council's Procedures, a committee will order a hearing where there has been an allegation of judicial misconduct that the committee believes has a basis in fact and which, if believed, by the finder of fact, could result in a finding of judicial misconduct. The hearing was scheduled to commence at 10:00 a.m. on March 25, 2015.

His Worship Whittaker retired effective March 15, 2015. As he was no longer a justice of the peace, the Hearing Panel and the Review Council lost jurisdiction. The hearing dates were vacated and the hearing did not proceed. As a result, the files were closed administratively. A decision by the Hearing Panel is included in this Report at Appendix "E".

CASE NO. 24-034/13

The complainant, a licensed paralegal, filed a complaint about a justice of the peace arising from an appearance in provincial offences court. He alleged that he was humiliated, harassed and belittled by His Worship. The complainant indicated that he was representing a client on several charges and had resolved the matters with the prosecutor in advance of court. He advised that he sought to clarify what charges were before the court and without any provocation His Worship started shouting at him, telling him to leave the court and that his matter would be stood down. The complainant alleged that he went and sat down and the justice of the peace called upon police officers to have him removed from the court.

The complainant advised that he waited outside the court for a few minutes and then re-entered thinking that he would be given the opportunity to be heard. The complainant alleged that before he could address the court, the justice of the peace once again summoned the police officer to have him removed from the court. The complainant said in his letter that he had never felt so humiliated and insulted.

He also expressed concern that his client's interest was prejudiced since, through no fault of his, the matter pertaining to him was not getting a fair hearing. The complainant felt that such conduct of the justice of the peace infringed his professional rights and also breached his human rights.

The investigating complaints committee reviewed the complaint and ordered and reviewed the transcript of the proceeding. As well, the committee requested and listened to the audio recording of the appearance.

After its review of the court record, the committee was concerned by His Worship's tone, manner, and demeanour in his interactions with the complainant. The committee noted

that the public's perceptions of the administration of justice are greatly impacted by the demeanour and comments of a justice of the peace in the courtroom. A justice of the peace has a unique role as exemplar and guardian of the dignity of the court. He or she has a responsibility to conduct himself or herself in a manner that promotes public confidence in the integrity, impartiality and fairness of the judiciary.

The complaints committee found that the transcript showed that when the complainant attempted to ensure that all charges referenced in the summons of his client were before the Court, His Worship repeatedly interrupted him and did not permit him to make his comments. The committee observed that the record indicated that His Worship appeared to be dismissive, impatient and rude in his comments and conduct toward him, ignoring him and treating him as if he had no standing in the matter. The committee found that the court record did not show that he was yelling, but his voice was raised.

The court record also showed that as the complainant was trying to speak, His Worship said, "Thank you. Lord have mercy. Officer, please. Thank you. He can wait outside." He ordered a security officer to have the complainant physically removed from the courtroom. The committee was concerned that when an agent was attempting to make submissions to the court in the interests of his client, His Worship appeared to arbitrarily instruct a security officer to remove him from the Court.

When the matter was recalled in court, the record indicated that even though His Worship knew that the complainant was attending as the agent for his client, His Worship gave no direction to have him paged or to provide an opportunity for him to be made aware that the matter was being brought back before the Court at that time. Rather, the matter was put to another date for an *ex parte* trial.

The committee invited His Worship to respond to the complaint. He provided a response and it was considered by the committee. The committee noted that His Worship had reflected upon his conduct towards the complainant. His Worship agreed in his letter that he was impolite and that he should have listened to the complainant's concerns. He expressed his regret that, in his haste to move the matter along, he gave a bad impression of an unfair justice of the peace. He expressed his apology to the complainant and observed that the complainant had been polite and patient, unlike His Worship. His Worship acknowledged that he had become frustrated, and he could understand how his behaviour toward the complainant was humiliating. He explained that he had become

focused on efficiency and lost sight of his obligation to maintain a respectful, civil and appropriate dialogue.

Although the committee could see from the response that His Worship intended to try to be more mindful of the responsibility of a justice of the peace to maintain appropriate dignity, patience and politeness in the courtroom, the committee was of the view that in the circumstances, the complaint should be referred to the Chief Justice pursuant to section 11(15)(d) of the *Justices of the Peace Act*. Under the Procedures of the Review Council, a complaints committee may refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A complaints committee may impose conditions on their referral to the Chief Justice of the Ontario Court of Justice if, in their opinion, there is some course of action or remedial training of which the subject justice of the peace could take advantage.

The committee referred the complaint to the Chief Justice on the condition that His Worship was prepared to take training, as recommended by the Chief Justice, which covered the subjects of how to conduct a proceeding when dealing with self-represented defendants and how to communicate with people in the courtroom.

The Chief Justice met with the justice of the peace and reported to the subcommittee after her meeting. Her Honour confirmed that His Worship was sent to a comprehensive education program to address the concerns identified by the committee. The committee noted from the report that following the course, Her Honour met with him and discussed the importance of the high standards of conduct expected of justices of the peace in maintaining public confidence in the judiciary. The Chief Justice also reviewed with him what he had learned from the education program. The committee could see from the report that the education program and the discussion with the Chief Justice had made His Worship aware of areas where he needed to improve and of the importance of fulfilling his judicial obligations.

The complaints process through the Review Council is remedial in nature. Through the review of and reflection upon one's conduct, improvements are made as to how situations are handled and individuals are treated in the future. After the process was completed, the file was closed.

Case Summaries

CASE NO. 24-037/13

The complainant, a lawyer, went to court to conduct a one-day special bail hearing for his client. The complainant told the Assistant Crown Attorney who was present that the bail hearing would not be proceeding on that date.

The complainant advised that prior to attending in court to request an adjournment, he was seated with the Assistant Crown Attorney in the hallway outside of court discussing the circumstances of the case when a woman, unknown to him, approached and spoke to the Assistant Crown Attorney, calling him by his first name. He corrected her on his name. The woman then said that she had heard the matter would not be proceeding as scheduled and asked why. When told the reason by the Assistant Crown Attorney, she allegedly replied "Couldn't they have figured that out before last night?" When he told her that sometimes these things happen, the woman said, "I'll bite my tongue."

The complainant stated that he did not know who the woman was but he was annoyed at her interruption and lack of understanding. He began to express his concerns but was allegedly interrupted by the woman who started speaking to the Assistant Crown Attorney again. He said that he and the woman spoke over one another for about five seconds. The woman allegedly turned to the complainant and yelled, "Shush, I am speaking now!" The complainant says he "responded in an equally loud tone that I was actually speaking now and she was interrupting me", and the woman walked away. The complainant said he was astonished when the Assistant Crown Attorney told him that she was the justice of the peace. The complainant expressed in his letter that "it had never occurred to me that a judicial officer would engage in that type of discussion and in a public corridor, no less".

He further alleged that when the matter was addressed in court, the exchange between them was "acrimonious". The complainant indicated that submissions were made on the record about the appropriateness of her acting as the justice of the peace on the next scheduled bail hearing date.

The complainant advised that his complaint related solely to Her Worship's conduct in the hallway. He expressed the belief that she was engaging in *ex parte,* out of court discussion about a case she was about to hear with a single party and then disparaged the absent opposing party. This led him "to question her understanding of the most fundamental element of her role as a judicial officer, to be impartial." Of a secondary

concern to him was the "high handed manner" in which she treated him when he tried to engage her and express his concerns. He alleges that she acted in a manner "unbefitting her role as a judicial officer".

The complaints committee ordered and reviewed the transcript of the appearance where the justice of the peace presided over the matter. The committee found that the transcript showed that when the complainant asked for the special bail hearing to be adjourned to another date, the justice of the peace asked why he was not ready to proceed. He declined to provide a reason. Her Worship indicated that the court was specifically set up for the bail hearing and noted that counsel declined to explain why he required the adjournment. He then said that he was not inclined to advise of the reason because of their conversation in the hallway. He described her as very rude and said she interrupted a conversation between him and the Crown Attorney. He said that when he attempted to speak, she "shushed" him and he responded in kind. He indicated that she would not be hearing the bail hearing in the future.

The committee noted that the record showed that Her Worship said that counsel's conduct was in no way a reflection on his client's ability to make bail and that her personal opinion was left outside the door. The complainant commented that, in addition to the justice of the peace's opinion, there also existed the appearance of justice, and that nobody who had witnessed the exchange in the hall between the complainant and the justice of the peace could possibly assume that the accused appearing before the justice of the peace would be given a fair hearing by the justice of the peace. He said that if Her Worship appeared on the next date, there would be an application to recuse her. Her Worship asked if they could now proceed with setting the date. The complainant indicated he wanted to make further submissions. She permitted him to do so. He then made comments, suggesting that Her Worship was upset because resources were put aside for a day hearing and all of a sudden it was not proceeding. Her Worship interrupted and commented that it was enough with the speeches and she observed that it was getting to the point where he was insulting her. She requested that he provide the date, time and courtroom for the next appearance date in a civil manner. He did so and the matter was adjourned. The committee found that the record showed that Her Worship remained calm throughout the dialogue. The committee did not find that her interaction with the complainant in the courtroom was acrimonious or inappropriate.

Case Summaries

The committee retained an independent external lawyer to assist the committee by conducting interviews of persons with relevant information about the events that took place in the hallway. The committee found that the investigation confirmed that there was conversation in the hallway outside of the courtroom and that there were members of the public who saw, and may have heard, the dialogue between the two lawyers and the justice of the peace. The committee also observed that the investigation indicated that during the conversation, both counsel became aware that Her Worship was the justice of the peace presiding in bail court. The evidence gathered showed that Her Worship remained calm and did not yell. The investigation indicated that Her Worship did interrupt the two lawyers and she asked the Assistant Crown Attorney why the bail hearing was not proceeding. The committee noted that the investigation showed that Her Worship "shushed" the complainant and he became very annoyed and somewhat disrespectful and rude towards Her Worship even though she identified herself as a justice of the peace.

The committee considered the general ethical rule that a justice of the peace should not initiate or consider *ex parte* communications (communications with one party where another party is absent) about an ongoing proceeding. *Ex parte* communications are barred to ensure that every party to a proceeding has a full right to be heard. They can give rise to a perception of partiality, improper influence or bias on the part of a justice of the peace.

The committee noted that in the circumstances, both parties were present during the dialogue in the hallway. As well, the investigation showed that the intention of the justice of the peace related to the administrative matter of scheduling. However, the committee noted that the public's perceptions of the administration of justice are greatly impacted by the conduct of a justice of the peace. This applies to conduct inside and outside of the courtroom. The committee was concerned that discussion between a justice of the peace and an Assistant Crown Attorney in the hallway of the courthouse about a case could give rise to a perception that he or she was not impartial. It can give rise to a perception that the presiding judicial officer may be basing decisions on information obtained outside of the courtroom, rather than on evidence and submissions put forward in the presence of all parties, including the accused. Even if the focus of a conversation is on administrative matters, such as scheduling, that conversation is better placed in the courtroom where statements are all on the record and there is no risk that a member of the public could misconstrue why the conversation is occurring.

The committee invited a response from the justice of the peace to the complaint. Her Worship provided a response, which was reviewed and considered by the committee.

After considering the information gathered during the investigation, the committee concluded that the actions of the justice of the peace did not amount to judicial misconduct. The committee determined that the appropriate disposition was to provide Her Worship with a letter of advice pursuant to section 11(15)(b) of the *Justices of the Peace Act*. The complaints process through the Review Council is remedial in nature. Through the review of and reflection upon one's conduct, improvements are made as to how situations are handled and individuals are treated in the future. In accordance with the Procedures of the Council, a committee will provide advice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the committee, a suitable means of informing the justice of the peace that his or her conduct is not appropriate.

The committee reminded Her Worship of the high standard of conduct expected of a justice of the peace and of the reasons why dialogue about a court case should take place in the courtroom, where all comments can be captured on the record and it is clear to the public what information is the basis for any decision made by the justice of the peace.

After providing its advice, the committee closed the file.

CASE NO. 25-006/14

The complainant wrote to the Review Council arising from his appearance before a justice of the peace in relation to the Crown Attorney's application for a weapons prohibition. He alleged that a Crown Attorney told him that the decision was made before the matter was heard in court. The complainant indicated that he had observed justices of the peace congregating with and meeting with clerks, secretaries and other staff behind thick glass. He said that they spoke with one another and exchanged information. He indicated that the decision was illegal and unjust and violated his *Charter* rights. The complainant believed that the justice of the peace may be politically active and that he may be abusing his power.

Case Summaries

The complainant alleged that the justice of the peace disregarded everything he said to push forward in a pre-determined "kangaroo fashion" and prevented him from asking questions of the police officers.

The committee reviewed the transcripts of the proceeding. The committee noted that there was nothing in the transcripts that supported the allegation that His Worship pushed the matter forward in a "kangaroo fashion" or that he prevented the complainant from asking questions. The committee found that the transcript showed that His Worship took the time to clarify several matters of procedure for the complainant. A voir dire (a mini-hearing to determine a matter of law) was conducted to ensure that statements made to police by the complainant were voluntary. The transcripts showed that His Worship assisted him during his cross-examination of witnesses. His Worship was fair, courteous, helpful and patient.

With respect to the complainant's observation of justices of the peace in the office of the courthouse, the committee noted that justices of the peace frequently interact with clerks and court staff outside of court as part of the process of carrying out their various responsibilities. The committee found that the transcripts showed that His Worship's decision on the application for a firearms prohibition was based upon evidence presented during the hearing and he provided reasons for his decision. The committee found nothing to support the allegation that His Worship's decision was pre-determined or that it was not objective or impartial.

The committee found that there was no evidence His Worship was politically active or abusing his power.

The committee noted that the complainant disagreed with how His Worship assessed the evidence and decided the case. The committee observed that decisions made by a justice of the peace are matters of judicial decision-making made in the course of a justice of the peace's duties outside of the jurisdiction of the Review Council, not matters of conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867.* The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that there was no support for the allegations, dismissed the complaint and closed the file.

Case Summaries

CASE NO. 25-014/14

The complainant filed a complaint about a justice of the peace who was presiding over provincial offences court. The complainant stated that all of his concerns taken together showed a "power hungry abusive [justice of the peace] with his own agenda to convict as many as possible as fast as possible."

The complainant said that he was specifically complaining that it took the system thirteen months to process a simple traffic violation, long past the one year and any reasonable statute of limitations; and that he was required to take three trips to the courthouse.

He alleged that:

- The justice of the peace turned down every single request for a continuance including a person with broken ribs who seemed to be on pain killers and a person who arrived from out of the country on that day.
- Out of the blue he verbally chastised a young woman sitting totally quietly next to her companion. The woman later testified that she is fighting a life threatening clinical depression illness. The complainant states that "his attack was totally out of his scope of his job description and such unprovoked stress attacks can and do lead to major regression in her type of illness which can lead to suicide."
- Further, in his own case, His Worship ignored basic science and the testimony of the police officer. He opened the door to insurance companies increasing the complainant's insurance rates. Even the prosecutor seemed surprised at the conviction.

He alleged that the attitude was "its my courtroom and I can do anything I want in it without accountability held by light weight JP's".

The complaints committee reviewed the letter from the complainant and ordered and reviewed the transcript of the proceedings in the courtroom that were referred to by the complainant. The committee also ordered and listened to the audio recording of the proceedings.

The committee noted that the complainant's allegations about how His Worship assessed the evidence in the complainant's case and how he decided the issues were matters of

judicial decision-making outside of the jurisdiction of the Review Council, not matters of judicial conduct. The legislative authority of the Review Council is limited to matters of judicial conduct. The committee also noted that the complainant's concerns about the length of time that it took to have his court case heard and completed, and the number of adjournments were matters of scheduling and/or judicial decision-making, not matters under the jurisdiction of the Review Council.

After reviewing the court record, the committee was concerned by the manner in which His Worship communicated with persons appearing before him in the courtroom, particularly self-represented defendants. The record indicated that he provided little or no assistance to self-represented defendants. The committee noted that a justice of the peace has a responsibility to provide assistance to the unrepresented defendant throughout the proceedings. It is important that the unrepresented defendant is made aware of his/her right to address the Court, and to make submissions and/or indicate a position on issues.

After reviewing the court record of the proceedings before him, the committee could understand why the complainant perceived him to have an "agenda to convict as many as possible as fast as possible". The committee was of the view that regardless of how busy the court may be, a justice of the peace must follow proper criminal justice process, refrain from shortcutting steps and execute justice in a proper and legal manner. The committee was also concerned by His Worship's approach towards defendants who may have possible medical conditions or medication that may be impacting on them.

The committee noted that the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* state:

> Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

The committee observed that the disparity of power between a justice of the peace and a defendant requires that a justice of the peace treat a defendant with courtesy, patience and understanding. The manner of a justice of the peace and the tone in which he or she speaks can create an atmosphere of intimidation that could discourage defendants from exercising their rights to trial and/or result in them not having the opportunity to have an adjournment.

The committee invited His Worship to respond to the complaint. He provided a response and it was considered by the committee. The committee noted that in his response, he showed a lack of understanding of how a justice of the peace should communicate with a self-represented defendant and of the obligations of a justice of the peace when presiding over matters involving self-represented persons. The committee observed that he was lacking an appreciation of the high standards of conduct expected of justices of the peace and of the negative impact that results when justices of the peace do not fulfill their responsibilities as judicial officers.

The complaints process through the Review Council is remedial in nature. Through the review of and reflection upon one's conduct, improvements are made as to how situations are handled and individuals are treated in the future. The committee was of the view that in the circumstances, the complaint should be referred to the Chief Justice pursuant to section 11(15)(d) of the *Justices of the Peace Act.* Under the Procedures of the Review Council, a complaints committee may refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A complaints committee may impose conditions on their referral to the Chief Justice of the Ontario Court of Justice if, in their opinion, there is some course of action or remedial training of which the subject justice of the peace could take advantage.

The committee referred the complaint to the Chief Justice on the condition that His Worship was prepared to take training, as recommended by the Chief Justice, which covered the subjects of how to conduct a proceeding when dealing with self-represented defendants and how to communicate with people in the courtroom.

The Chief Justice met with the justice of the peace and reported to the subcommittee after her meeting. Her Honour confirmed that His Worship was sent to a comprehensive education program to address the concerns identified by the committee. The committee noted from the report that following the course, Her Honour met with him and discussed the importance of the high standards of conduct expected of justices of the peace in maintaining public confidence in the judiciary. The Chief Justice also reviewed with him what he had learned from the education program. The committee could see from the report that the education program and the discussion with the Chief Justice had made His

Worship aware of areas where he needed to improve and of the importance of fulfilling his judicial obligations.

After the process was completed, the file was closed.

CASE NO. 25-016/14

The complainant appeared in court on behalf of his wife on a *Highway Traffic Act* matter. He alleged that while he was waiting for the case to be heard, he observed the following behaviour on the part of the justice of the peace:

1. His Worship insulted and showed a total disregard to the dignity of an East Indian lady who requested a further reduction in her fine because her husband did not have a job.
2. An Asian lady who was being assisted by an interpreter was told by His Worship, through the interpreter, that he did not care about her feelings or concerns and that it was her fault for going to trial.

He alleged that in relation to his wife's court matter, His Worship "strongly suggested that I plead guilty to save the courts time". Further, he alleged that His Worship told him that he did not care about his conscience or his ethical concerns. The complainant said that when he tried to plead no contest so he did not have to tell an untruth, His Worship became "enraged yelled and told me it was his court" and that he would not accept a plea. His Worship chose a date "with no concern to the date chosen as to if I could attend." He was allegedly told to "show up or get someone to show up"` and "be prepared".

The complainant said that he found His Worship's behaviour to be insulting, rude and not acceptable. He also said that he had some medical issues and did not need to be abused and yelled at. He felt that he was not treated fairly. He suggested that the justice of the peace should be sent to a course on how to treat people with respect, and that he should not be angry and abusive in the courtroom.

At the time when the complainant wrote to the Review Council, the court case was still ongoing. He was informed that if a complaint raises allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Review Council will not generally commence an investigation until that court proceeding and any appeal or other

related legal proceedings have been completed. This is to ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters. After the court proceeding was completed, the complainant again wrote to the Review Council.

The complaints committee reviewed the letter from the complainant, and ordered and reviewed the transcript and audio of the court proceedings for the matters that were scheduled before His Worship for the tier referred to by the complainant.

The committee did not find support in the court record for the allegation that His Worship insulted or demonstrated a total disregard to the dignity of an East Indian lady. The committee found that the court record showed that the female defendant requested a further reduction in her fine due to the fact that her husband was not working. The justice of the peace explained to her that he had already reduced the fine and given her 120 days to pay. In that context, the woman said that her husband might have a job by then.

The committee observed that the court record showed that when a female Asian defendant did not understand what cross-examination meant, His Worship stopped her and said, "... stop, stop, stop. This is not where you give evidence. This is cross-examination, you're supposed to know what this is..." After the defendant said that there was a person in the car with her and that she could ask her to come to court, His Worship said, "Ma'am, you're supposed to know all of this and you should have called her as a witness. It's too late now. You decided to go to trial..."

The committee observed that the court record showed that His Worship did not provide her with the opportunity to make submissions before he convicted her, and after she said that she didn't feel she had done anything wrong, he said to her, "You can feel that way, that's okay. I'm not impressed by your feelings. I want to see the – I want to know the facts, okay. Your feelings got nothing to do with the facts and there's no point arguing about it now..."

The committee noted that His Worship was explaining that the decision must be based on the evidence and not on emotions. However, the committee could understand why the complainant had concerns about His Worship's manner towards her and the way his comments were communicated.

The committee found that the court record showed that when the complainant appeared before the justice of the peace, the complainant said that he would save the court and plead no contest. His Worship told him that he could not, and that he was supposed to be there prepared for trial. The committee noted that although His Worship did not appear to be yelling, his voice was raised. He said to the complainant, "You're supposed to know what is available to you and what you're required to do." His Worship also said, "You don't know anything and you're presuming to talk when I'm speaking to you, don't do that.....okay? There's no such thing as a plea of no contest, okay. It's either guilty or not guilty."

The committee observed that the record showed that when His Worship said he was putting the matter over, the defendant explained that he had a number of professional responsibilities that were already scheduled. His Worship appeared to be annoyed and impatient when setting a date. The committee noted that the transcripts showed that His Worship set the matter on a date when he knew that the complainant could not appear, telling him, "Well, you can send a representative, okay? Properly instructed who can handle the matter for you..."

The committee noted that His Worship's decision to adjourn the case to another date was a matter of judicial decision-making outside of the jurisdiction of the Review Council, not a matter of judicial conduct. The jurisdiction of the Review Council is limited to the investigation of allegations about conduct.

The committee noted that the perceptions of the public of the administration of justice are greatly impacted by the demeanour and comments of a justice of the peace in the courtroom. After its review of the court record, the committee members observed that His Worship was polite at the outset but he was abrupt and impatient with defendants when their matters did not proceed quickly or they raised questions or made comments that could slow down the matter. It appeared to the committee that His Worship did not take time to explain the proceedings to self-represented defendants, and that he was impatient with and rude in his dealings with them.

The committee understood the busy demands faced by a justice of the peace when presiding in Court and the concerns he or she might have about effective use of court time. However, the committee noted that the public always expects high standards of conduct from a justice of the peace. A justice of the peace is expected to be patient, dignified

and courteous to litigants. The justice of the peace is expected to be the exemplar and guardian of the dignity of the court.

The committee noted that a commentary in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

> *Commentaries:*
>
> Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

The committee also noted that a justice of the peace has the responsibility to assist a self-represented defendant. A justice of the peace should ensure that the unrepresented defendant receives a fair trial, and that his/her defence is brought out with its full force and effect.

The committee was mindful that the perceptions of the public of the administration of justice are impacted by the demeanour and comments of a justice of the peace presiding in the courtroom. The committee noted that for the vast majority of society who have contact with the court system, their first and only contact would be to appear before a justice of the peace. A great number of members of the public will form judgments of our justice system based on their experiences with a justice of the peace.

The committee decided to invite His Worship to respond to the complaint. His Worship provided a response and it was considered by the committee.

The committee observed that in his response, His Worship recognized that he had been impatient and curt towards the female defendant and the complainant. He explained that he felt pressured from the heavy list of cases that day. He expressed his apology to the complainant and to the Asian defendant for making them feel disrespected.

It appeared to the committee that after considering the complaint, His Worship appreciated the responsibility of a justice of the peace to remain polite and respectful towards all persons appearing before him or her, regardless of the number of cases that are scheduled to be heard. The committee observed that His Worship's response showed that after the concerns raised by the complaint were brought to his attention, he had consulted with judicial colleagues and that he had a better appreciation of the importance

of ensuring that unrepresented persons were provided with proper explanations to ensure a fair trial.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. After considering His Worship's response, the committee observed that it appeared that His Worship had learned from the complaints process. The committee concluded that no further action was required, dismissed the complaint and closed the file.

CASE NO. 25-017/14

The complainant alleged that the justice of the peace signed a summons for the complainant to appear in court in response to an application for a peace bond that was made by another person who had been harassing the complainant. The complainant indicated the police had previously taken that person into custody under the *Mental Health Act*.

The complainant alleged that when the person applied for the peace bond, the information he provided about the complainant's name and address was wrong, and it was highly suspicious and filled with lies. He alleged that it was "mind-boggling" that Her Worship agreed to issue process and sign the document.

He said that the facts provided to the justice of the peace by the person were delusional fabrication and could easily be disproved. He questioned why the police had recognized the person to be emotionally disturbed and non-credible, but Her Worship could not tell, despite highly suspicious circumstances.

The complainant indicated that he then had to appear a number of times in court, he missed work and he had transportation costs. When the hearing was scheduled to determine whether he must enter a peace bond, the person who had applied for the peace bond did not show up and the matter was withdrawn. He indicated that the presiding judicial officer apologized to him and after he left the court, the Crown Attorney told him that he couldn't believe a justice of the peace allowed something like this to go through, and he advised the complainant of the Justices of the Peace Review Council's complaints process.

Case Summaries

The complaints committee noted that under the law, the first step in the process when a person applies for a peace bond is attending at Intake Court before a justice of the peace. This is done in the absence of the other party against whom the peace bond is requested. As a measure of ensuring reliable evidence, a justice of the peace can require the person to confirm under oath whether the facts supporting the application are true. Once it is determined that there is sufficient reason to cause the person against whom the peace bond is sought to attend court, a summons is issued and the matter is set for a hearing when both parties are present and cross-examination could take place.

The committee ordered and reviewed the transcript of the person's appearance in Intake Court before the justice of the peace. The committee found that the transcript showed that the person described his concerns and that Her Worship asked him to state under oath whether the facts were the truth. The person swore that they were true. At the time, he was accompanied by a relative.

The committee noted that the decision made by Her Worship was based on the information provided to her under oath. The committee found no evidence of misconduct and concluded that this complaint related to the exercise of judicial discretion and decision-making in the course of carrying out the duties of a justice of the peace. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no discretion to assess or change a justice of the peace's decision or to act on complaints that do not fall within its jurisdiction.

The complaint was dismissed on the basis that it was outside of the jurisdiction of the Council.

CASE NO. 25-018/14

The complainant's client appeared before a justice of the peace in bail court. The complainant provided a history of the court matter and indicated that she was unable to attend court on the day in question. She said that had provided instructions to Duty Counsel for the matter to be adjourned to a certain date. The complainant alleged that afterwards, she was made aware that during the court proceeding, His Worship was angry that the case had not proceeded and ordered that she must appear at the future specified court date or a bench warrant would be issued for her arrest.

She also expressed her understanding that His Worship also made comments that some lawyers do not comply with the rules of Justice on Target (JOT). She felt that His Worship's comments were directed towards her.

The complaint was assigned to a three-person complaints committee of the Review Council, consisting of a judge, a justice of the peace and a community or lawyer member for review and investigation. The committee reviewed the letter, and ordered and reviewed the transcript and audio of the proceeding. The committee also noted that the complainant had spoken to staff in the office of the Review Council by telephone and said that His Worship is generally courteous and that in her view, this incident was not part of a pattern of conduct.

The committee found that the court record confirmed that His Worship did say that counsel was ordered to appear in court on the particular date and that if she did not appear, there would be a warrant issued for her arrest. He also made a comment about Justice on Target, indicating that it was only on target with certain people. The committee ordered and reviewed the transcript of the next court appearance. The committee found that on the return date, the complainant was not present. A warrant was not issued for her arrest.

The committee noted that a judicial officer is expected to be fair and to provide an opportunity for a person to defend oneself before judgment against them is expressed. Further, the committee observed that when a justice of the peace makes a critical statement of a lawyer in circumstances where there is no chance of defence before the criticism is made, such action may be perceived by members of the public as unfair. The committee also noted that a justice of the peace is expected to be patient, dignified and courteous to parties appearing before him or her. The justice of the peace is expected to be the exemplar and guardian of the dignity of the court.

After reviewing the court record, the committee was concerned by His Worship's comments. Further, the committee observed that justices of the peace have considerable power and discretion. The manner in which a judicial officer exercises that power and discretion affects the public's confidence in the judiciary and in the administration of justice.

The committee invited His Worship to respond to the complaint. His Worship provided a response and the committee reviewed and considered the response. The committee could see from His Worship's response that his comments arose from the history of the particular case. He recognized that although a justice of the peace has a responsibility

to ensure that court time is used efficiently, he should remain dignified and respectful of the parties. The committee could see that he had sincerely reflected upon his conduct and genuinely regretted how he had responded in court. The response showed that he realized he should not have criticized the complainant without her being present to defend herself. His Worship explained that he generally takes care to treat all parties who come before him with dignity and respect. He also realized that he had made an error in law, exceeding his authority by threatening to issue the warrant for her arrest. He assured the committee that the behaviour he displayed toward the complainant will not be repeated in the future. He apologized for his conduct and in particular, through the Review Council, he apologized to the complainant.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations are handled and individuals are treated in the future. The committee could see that His Worship had reflected upon, understood and appreciated the concerns about his conduct and was satisfied that such behaviour would not be repeated.

The committee concluded that no further action was necessary and closed the file.

CASE NO. 25-019/14

The complainant appeared before a justice of the peace seeking to lay a private information against another person.

Some of the complainant's correspondence was submitted to the Review Council in French. One of the members of the committee was fully bilingual, ensuring that all of the concerns were comprehensively understood, communicated to and considered by the committee.

The complaints committee reviewed all of the correspondence submitted by the complainant, along with the supporting documentation. As well, on behalf of the committee, court staff were contacted to see whether there was any recording of the appearances before His Worship and they said that there were no recordings.

The complainant alleged that his request for a criminal charge to be laid against a person was refused. He said that the justice of the peace told him that he would have to have new

evidence for the matter to be considered. The complainant said he obtained new evidence at a significant cost to him and the justice of the peace refused to consider it, saying that the matter was closed. He alleged that the justice of the peace refused to consider a new application and told him that he was prohibited from contacting the justice of the peace about the case. He alleged that the police put pressure on the justice of the peace to refuse to see him. He also alleged that the police tried to intimidate and frighten him. The complainant was informed that the Review Council has no authority to review the conduct of police officers. The complaints committee noted that the complainant had pursued his concerns about the police through the Office of the Independent Police Review Director.

In his letter, he expressed the view that he was entitled to contact a justice of the peace to present new evidence and that a justice of the peace cannot refuse to see him. He asked for applicable legislation that may authorize certain actions by a justice of the peace. The complainant was informed that the Review Council is not permitted to provide a person with legal advice. A lawyer is in the best position to give a person advice about his or her rights under the law.

The committee found that the investigation showed that the justice of the peace refused to see the complainant. In doing so, His Worship referred to a decision made by a higher level of court. The committee noted that decisions made by a justice of the peace are matters of judicial discretion made in the course of carrying out the duties of a justice of the peace that are outside of the jurisdiction of the Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Review Council's legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no authority to change a decision of a justice of the peace.

The complaints committee concluded that the concerns related to a matter of judicial decision-making, not a matter of conduct within the jurisdiction of the Review Council. If the complainant disagreed with His Worship's interpretation of the decision made by the higher level of court, the appropriate way to proceed would be through remedies in the courts. The file was closed on the basis that the complaint was outside of the jurisdiction of the Council.

Case Summaries

CASE NO. 25-020/14

The complainant appeared before the justice of the peace in Intake Court on a charge of failing to stop for a red light. She noted in the letter that English was her second language.

The complainant alleged that when she entered Intake Court, she explained that she had lived in Canada for many years and it was her first time receiving an offence notice. She said that His Worship asked her if she had intended to plead guilty to which she replied, "Yes, but with reasons." Further, she said that he responded by saying, "Go to court, not here". She said that she explained it was not her intent to go to court due to the cost. His Worship then proceeded to ask her if she was pleading guilty.

In her letter, she indicated that His Worship confirmed more than once that she was pleading guilty, and that while he prepared the documents, she began asking questions about the length of time the lights were yellow and red, and she said that if the timer was the same, the red light incident may not have happened.

She alleged that His Worship responded by throwing down his pen and shouting at her in an angry tone that she was not pleading guilty and she must go to court. She indicated in her letter that she was scared, perplexed and shocked, and did not know what she had said to trigger him to become so angry. She indicated that she said that she would take her words back and plead guilty. She alleged that he spoke in a very harsh tone, saying that he was done with her and she must come back next time. She described the discussion that then followed between them, indicating that she tried to explain and that without listening to any of her words or explanations, he demanded that she get out of the office. She stated that when she calmly asked why it could not continue, he shouted angrily, "Get out of my office!"

She also alleged that His Worship threatened her that, "If you don't leave the office, I'm going to call the police". She alleged that he demanded that she, "Get out!" She alleged that when she asked why he was doing this to her, he roared, "I'm the Judge!" She also indicated that he said he was going to push the buzzer and then walked out of the office. She alleged that when she left the office, she was removed by the police and told that she had to leave the building or she would be arrested.

Case Summaries

The complainant asserted that: she was treated unfairly and unjustly; she was seriously discriminated against because of age, race and language; her human rights had been deprived and violated; and, her human dignity had been wholly insulted.

The complainant informed the Council that she returned to court on another date and pled guilty to the offence. She also included a photo of the bruising to her arm that she alleged was caused by police when she was removed from the building on the day when she appeared before His Worship.

The complaints committee requested a copy of the transcript and audio recording to determine what occurred. The committee reviewed the transcript and listened to the audio recording.

The committee observed that the transcript ended abruptly, at a point when the complainant was still in the Intake Court appearing before the justice of the peace. The transcript showed that the complainant was in the middle of a sentence saying that she wanted to plead guilty and did not want to come back again. The committee listened to the audio recording and found that the audio recording also cut off abruptly at the same point.

In order to see whether the committee had the complete record of the complainant's appearance before the justice of the peace and to assess all of the allegations, the committee requested from court staff the continuous recording that included the end of the complainant's proceeding and the beginning of the matter that took place directly after this one in the Intake Court. The committee received and listened to the audio recording that included the end of the recorded portion of the complainant's appearance and the beginning of the next matter. The committee found that there was no additional record of her appearance before the justice of the peace. The transcript and the audio recording both stopped abruptly after the words from the complainant, "I don't want to come back ag….".

The committee observed that the audio recording did not include the complete proceeding or the full dialogue that occurred. The complainant made allegations about the events that occurred after the recording was stopped. Without a complete court record, the committee found it necessary to invite a response from the justice of the peace to the allegations.

His Worship provided a response that was reviewed and considered by the committee. In his response, he explained that he believed that the complainant had a possible defence

to the charge and he concluded that he could not accept the plea of guilty. He also said that he had turned off the recording because he thought that the complainant was leaving the Court. He indicated that when she said that she was not leaving, he told her that if she did not leave, as other people were waiting to see him, steps could be taken to have her removed from the office. He did not recall how she left the office and had no knowledge of her interaction with the security guard.

The committee observed that the audio recording showed that during the portion of the proceeding that was recorded, neither the complainant nor the justice of the peace raised their voice. There was no evidence that His Worship yelled or that he roared at the complainant. There was no evidence that suggested he had thrown his pen.

Following a careful review of the complaint and His Worship's response, the committee was left with somewhat differing versions of the events that occurred after the recording was turned off. Without the complete audio recording or transcript, the committee could not determine everything that was said by the complainant or by the justice of the peace. Nor could the committee hear the manner or tone in which they spoke after the recording was stopped or whether the police were called to remove her from the office.

It appeared to the committee that during the process, the complainant may not have fully understood why her guilty plea was not being accepted. His Worship said that he could not accept the guilty plea after she made comments about the timing of the traffic lights; however, he repeated, "I can't" without further explanation. The committee noted that a justice of the peace has the discretion as to whether he or she is satisfied that the conditions for a guilty plea exist and as to whether a guilty plea will be accepted. However, the committee observed that it is important for a self-represented defendant in court to have a very clear understanding of the process. A defendant needs to understand that he or she has a right to have a trial where the Crown has to prove the charges against him or her, and where evidence must be called and considered by a justice of the peace. He or she needs to also understand that by pleading guilty, he or she is giving up those rights. A guilty plea is considered the end of the challenge to the charge against the defendant and a full admission of guilt. It appeared to the committee that this complainant did not understand those aspects of the process.

Case Summaries

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. The committee decided that the appropriate disposition was to provide His Worship with written advice as its disposition of the matter pursuant to section 11(15)(b) of the *Justices of the Peace Act*.

The committee provided advice to His Worship about the importance of ensuring a complete record of all court proceedings. The committee referenced the case of *R. v. Billingham* and the importance of a justice of the peace ensuring a comprehensive record of all proceedings, including guilty plea appearances. As well, within the complaint review process, the court record is often the best and most objective evidence available to inform the committee as to what happened in court. An incomplete record, can, such as in this case, prevent the complaints committee from making findings and hinder its ability to fully assess a complaint.

The committee could see from His Worship's response that it was his intention to convey to the complainant that, as a justice of the peace, he was not satisfied that the requirements had been met to accept a guilty plea. The committee advised His Worship that it is important to remember self-represented defendants may have no familiarity with the legal process or concepts. It is always important for a justice of the peace to be aware of how his or her comments and conduct are viewed and understood by those appearing before him or her.

The committee understood that provincial offences court is very busy, with many defendants. While the committee appreciated the demands upon a justice of the peace, the committee reminded His Worship that regardless of how busy a court is, there is an obligation on every justice of the peace to take the requisite time to listen to individuals before him or her, to explain what the proceeding is about so that they can properly understand the process and the decision of the justice. This is particularly important if the individual before them is not legal counsel and English is not their first language.

After providing its advice, the committee was of the view that no further action was required and the file was closed.

Case Summaries

CASE NO. 25-021/14

The complainant appeared before the subject justice of the peace on two occasions at different court locations. He alleged that on the first occasion, a police officer stood outside of the door of the Intake Court and that the justice of the peace refused to close the door. The complainant alleged that the justice of the peace spoke loudly so that the police officer could hear what was said, and it was obviously a plot because the Ontario Provincial Police (OPP) should not be involved in his process.

The complainant said that he had wanted to lay a charge against a police officer and the justice of the peace had advised that he should wait until his own appeal was completed. The complainant felt that this was bad advice. He believed that after the appearance, police officers conspired against him.

The complainant alleged that on the second occasion, he went to court to have a charge withdrawn but before this could be done, a police officer "attempted to obstruct justice to force a trial on a 'fraudulent' charge". The complainant alleged that His Worship "is in a conflict of interest because he was practising criminal law" for the police officer and acting for the OPP generally.

With respect to his concerns about the police, the complainant was informed that the Review Council has no authority to review the conduct of police officers. The complainant was referred to the Office of the Independent Police Review Director.

The complaints committee reviewed the correspondence submitted by the complainant. The committee requested copies of the transcripts and audio recordings of both appearances. Court staff advised that an exhaustive search was conducted and no appearance by the complainant on the specified dates was found on any recording. Court records indicated that the named justice of the peace was not sitting on either of the dates in the specified locations.

According, there was no evidentiary basis to support his allegation that His Worship was acting on behalf of police officers.

The committee dismissed the complaint and closed the file.

Case Summaries

CASE NO. 25-022/14

The complainant appeared before His Worship, on behalf of his brother, for a trial relating to an offence under the *Highway Traffic Act*.

The complainant indicated that when he arrived at the courthouse he was advised that the matter had been moved to a different courtroom. The complainant felt that this was done deliberately and unethically so he would have to appear before another justice of the peace. The complainant was of the view that because His Worship agreed to preside in another courtroom, he was guilty of unethical conduct.

The complainant also alleged that His Worship acted in a prosecutorial role rather than acting in a neutral manner. The complainant further states that he put forward legal arguments in his brother's defence that provided sufficient grounds to justify a verdict of "not guilty". He alleged that His Worship's responses to the arguments were argumentative and dismissive in nature, without proper references to the legal arguments that he made in his defence. The complainant was unsure whether His Worship demonstrated a lack of knowledge of the law, a lack of competence or whether His Worship's decision was a pre-determined decision.

The complainant also alleged that during sentencing, His Worship made comments that were discourteous, offensive and disproportionate to the facts of the case. He stated that he did not deserve the harsh language used by His Worship.

The complaint was assigned to an investigating complaints committee. The committee reviewed the letter of complaint and the transcript of the trial which had been provided by the complainant. The committee requested and reviewed the audio recording of the trial.

With respect to the complainant's concerns about the trial being moved from another courtroom into His Worship's court, the committee noted that it is common practice to have matters transferred to other courts when a court finishes its own list of cases and a judicial officer is willing to assist by taking additional matters. It was not inappropriate for His Worship to agree to assist the other court.

From its review of the court record, the committee observed that, when it appeared that the defendant wanted to make a legal argument in support of having the charge

dismissed, His Worship entered into an argument with the complainant about the case and the facts before evidence was called.

The committee observed from the transcript that the prosecutor intervened to point out that it appeared that the complainant was planning on bringing a motion for non-suit and that he should be arraigned. The committee noted that His Worship did not provide any introductory comments about the process to the defendant and his brother, and no proper ruling was articulated on the motion.

The committee also observed from the court record that during the proceedings, His Worship's tone and manner appeared to be dismissive, abrupt, sarcastic and annoyed. His Worship also made comments that could be perceived to be lecturing and condescending.

The committee understood the busy demands faced by a justice of the peace when presiding in Court and the concerns about effective use of court time. However, the public expects high standards of conduct from a justice of the peace. A justice of the peace is expected to be patient, dignified and courteous to litigants. The justice of the peace is expected to be the exemplar and guardian of the dignity of the court. As indicated in the commentaries in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice:*

> *Commentaries:*
>
> > Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

The committee noted that the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* state:

> 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.
>
> *Commentaries:*
>
> > Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

Case Summaries

The committee was mindful that the perceptions of the public of the administration of justice are impacted by the demeanour and comments of a justice of the peace presiding in the courtroom.

The complaints committee decided to invite His Worship to respond to the complaint. His Worship provided a response which was considered by the committee.

The committee could see from His Worship's response that he had taken the complaint very seriously and that he had reflected upon his conduct. It was evident to the committee that His Worship had carefully reviewed the full audio recording of the proceeding. His response showed an appreciation of the shortfalls in his conduct and that he understood why the complainant left the courtroom with the concerns which he expressed in the letter of complaint. His Worship took full responsibility for his actions and the impact of his conduct on the complainant's perceptions of the administration of justice.

His Worship explained that there were personal events impacting on him at the time of the court proceeding and that his behaviour on that day was not indicative of his daily or usual behaviour. However, His Worship also emphasized that he did not want to make excuses for his actions and that he took full responsibility for his words and conduct.

The committee could see from His Worship's response that he recognized the importance of the duty of a justice of the peace to show professionalism and respectfulness toward those appearing before him or her, including unrepresented defendants. The letter showed that he genuinely regretted his conduct, as well as the impression left with the complainant. He respectfully asked the committee to extend his sincere apology to the defendant for how he was treated that day.

The committee observed that His Worship's response demonstrated careful thought about the concerns raised by the complainant and that he had taken the concerns raised by the complainant and the committee seriously. The committee could see that His Worship had found the complaints process to be a learning experience and that he intended to use the experience to help him to be a better justice of the peace.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct, improvements are made as to how situations and individuals are treated and handled in the future.

The committee concluded that no further action was required, dismissed the complaint and closed its file.

CASE NO. 25-023/14

The complainant, a lawyer, attended court as an observer. She said in her letter that His Worship arrived twenty minutes late and was conspicuously chewing gum. She said that the court clerk apologized earlier on his behalf for him being late.

She alleged that during the court proceedings His Worship "kept rebuking the clerk" in relation to the court listings. In her letter, she provided the name of the person whom she identified to be the clerk. She said, "Considering they were both on the same team, the behaviour of the JP was at best unprofessional, particularly as the public face of the court system and that it made an already intimidating situation worse for those appearing before the JP."

She expressed her view that the behaviour of His Worship was an abuse of his position. She said that in all of her years as a lawyer, she had never seen any justice of the peace behave so unprofessionally. She stated that His Worship needed to be reminded of the high standards expected of a judicial officer and that it should not be abused by denigrating those he perceived to be below him.

The complaints committee reviewed the complainant's letter and ordered and reviewed the transcript of all of the court proceedings that occurred during the session of court referenced by the complainant. The committee ordered the audio recording of the proceedings and listened to excerpts of dialogue.

The committee noted that the morning docket consisted of Early Resolution matters. These are matters where the defendant, after receiving an Offence Notice, opts to meet with the prosecutor to discuss possible resolution. The committee noted that for this type of proceeding, the prosecutor generally needs time to speak with the defendants before addressing the matter in open court which often means that the court opens later than the scheduled time. The committee observed that a good practice is to start court on time, then allow a recess for the prosecutor to talk to defendants, and reconvene court when the matters are ready to proceed.

The committee was unable to determine whether His Worship was chewing gum. The committee observed that the transcript and the excerpts of the audio recording showed no evidence to support the allegation that His Worship rebuked anyone in the courtroom. The committee found that the transcripts showed that the court staff person named by the complainant in her letter as the person allegedly rebuked by His Worship was in fact the prosecutor, rather than the clerk. The committee observed that the audio recording showed that His Worship was professional and calm with all persons in the courtroom, including the clerk and the prosecutor. His tone remained moderate, measured and polite. There was no indication that he was abusive or that he denigrated anyone.

The committee noted that the court record showed that His Worship recognized the importance of court starting on time. The committee observed that near the end of the first session of court, he explained to the prosecutor that it was important to start court on time so that people were not left with the impression that court starts late. He indicated that he would like to start the next session as close to the scheduled time as possible and he would then give the prosecutor a recess if she needed more time. He also suggested a way for her to manage cases if charges were being withdrawn so that defendants would not be unnecessarily detained at court. The dialogue was polite and calm, and showed a concern for efficiency and for service to the public.

After carrying out its investigation, the committee did not find that the transcript nor the audio supported the allegations noted in the letter of complaint and therefore dismissed the complaint.

CASE NO. 25-024/14

The complainant, a licensed paralegal, appeared before the justice of the peace representing a client who was charged with driving without insurance. He indicated in his letter that he spoke with the prosecutor and agreed to a plea deal and a joint submission. He stated that he asked Her Worship to reduce the fine because his client was a single mother on social assistance. He said that Her Worship asked him whether his client received support from the children's father and the complainant indicated that he did not know.

The complainant alleged that Her Worship "became angry and snubbed me" by stating that "this was my responsibility to know all the facts about the defendant". He alleged

that she was not satisfied and clearly "became furious". She accused him of being incompetent to represent the defendant because he entered a guilty plea on behalf of the defendant when she was not the owner of the car. He alleged that she "ultimately banned me from representing the defendant in the court of law", even though he showed her the car ownership document in the name of the defendant.

The complainant alleged that he was the subject of harassment and he was humiliated by Her Worship in front of the body of the court. He stated that as a member of the Law Society of Upper Canada, he deserved fair and respectful treatment from the court. He also felt that his rights as a professional had been violated and that Her Worship was prejudicial and biased and, because she banned him from representing the defendant, she caused unnecessary damage not only to the defendant but to justice as well.

The complaints committee read the complainant's letter and ordered and reviewed the transcript of the proceeding. The committee ordered the audio recording of the appearance and listened to excerpts of it. The committee found that the audio recording showed that Her Worship remained calm and polite in her exchanges with the complainant.

The committee noted that the court record showed that Her Worship was concerned that the complainant did not come prepared with all of the information needed when a reduction to a fine is requested. The record also showed that Her Worship was concerned that after pleading guilty on behalf of his client, the complainant then indicated that she was not the owner at the time of the alleged offence. Her Worship determined that an essential component of the offence of driving a motor vehicle without insurance was absent.

The committee observed that Her Worship was concerned that the complainant may not have understood the facts of the case or the law that applied. She provided the opportunity for submissions from the complainant and from the prosecutor and then decided to strike the guilty plea. The committee noted that the record showed that in those circumstances, Her Worship told the complainant that he was not competent to represent the defendant and adjourned the matter for the defendant to be present and decide what she wished to do. Her Worship also requested that the transcript be ordered in order to assess whether a copy should be provided to the Law Society of Upper Canada.

The committee found that Her Worship's interpretation and application of the law, her determination of the issues and her decision to strike the guilty plea were matters of judicial decision-making and judicial discretion outside of the jurisdiction of the Council,

not matters of conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no discretion to change a justice of the peace's decision or to act on complaints that do not fall within its jurisdiction. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The committee concluded that there was no evidence of harassment of the complainant or prejudice on the part of Her Worship. Rather, Her Worship acted in a manner that she determined would protect the defendant's right to a fair determination of the issues.

Although the complainant indicated being humiliated, the committee found that this was not the result of any judicial misconduct.

The committee dismissed the complaint and closed the file.

CASE NO. 26-001/15

The complainant appeared before His Worship on two occasions to try to obtain a peace bond against a family member. The complainant alleged that on both occasions, the conduct of His Worship was inappropriate and unethical. She alleged that he displayed improper behaviour contrary to the Council's expectations and to the general public's right to fairness.

She alleged that on the first occasion, after a court staff person had apprised His Worship of their situation, His Worship refused to see her and other family members.

She said that on a different date, she attended another courthouse with the belief that another justice of the peace would agree to at least hear the case. The complainant stated that she was shocked to discover that same justice of the peace was presiding over the matter. She also said that a court staff person at that location had assured her that she had a case for obtaining a peace bond. The complainant alleged that her appearance before His Worship was soured from the beginning because His Worship was determined to reject her application before all the evidence was presented to him. She felt that she should have been given the opportunity to present her case during the first appearance date.

The complaints committee read the letter of complaint. The committee requested a copy of the transcript and audio recording for each date to ascertain what had occurred. The committee also received information from court staff at the first location who confirmed that the complainant had attended at the courthouse and signed in on the Intake Court sheet but she did not appear in Intake Court. The committee found that the information showed that she spoke with a staff person at the counter who conferred with His Worship and it was determined that the matter could not be dealt with in Intake Court.

The committee also received information from court staff at another court location who confirmed that the complainant had appeared before His Worship in Intake Court. Court staff advised that there were technical issues with the main control panel on the particular date, and as a result there was no audio recording available of her appearance before His Worship. The information showed that the proceeding lasted about fifteen minutes. However, there was no sound on the tape. As a result, no transcript of the appearance could be produced.

The committee invited His Worship to respond to the complaint. His Worship provided a response and the committee reviewed and considered the response.

After reviewing the information gathered during the investigation, the committee concluded that it appeared that on the first occasion, there was a miscommunication between the complainant and the court staff person and between the court staff person and His Worship about the purpose of the complainant's attendance. His Worship was left with the understanding that the complainant sought legal advice to deal with her family circumstances. His intention was to communicate to her through court staff that he could not provide legal advice and that she would need to seek legal advice from a lawyer. He did not understand that she wanted to apply for a peace bond and if he had realized that, he would have agreed to meet with her.

In the circumstances, the committee concluded that the justice of the peace declined to see the complainant because he believed that she was seeking legal advice. The committee noted that when a person attends at the courthouse to see a justice of the peace, it is always preferable for the matter to be addressed in Intake Court on the record. Any dialogue about a court case should take place in the courtroom, where all comments can be captured on the record and it is clear to the public what information forms the basis for any decision made by the justice of the peace. In that way, the justice of the

peace can hear directly from the person why he or she is there, and there is no risk of a misunderstanding arising from communication through a third party, such as court staff.

With respect to the second appearance, the committee noted that although there was no court record, the investigation showed that this was through no fault of His Worship. It was the result of a fault on the main control panel. The investigation showed that His Worship generally used the recording device for the proceedings before him.

Without a court record, the committee was not able to determine on a balance of probabilities what was said between the complainant and His Worship.

With respect to the decision made by His Worship on the second occasion that he would not grant the request for a peace bond, the committee observed that the assessment of evidence, the determination of issues, and decisions made by a justice of the peace in a case are matters of judicial decision-making made in the course of a justice of the peace's duties outside of the jurisdiction of the Review Council, and not matters of conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no legal authority to interfere with or change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that the complaint should be dismissed and the file was closed.

CASE NO. 26-002/15

The complainant appeared in provincial offences court before the justice of the peace for a trial on charges. He was convicted and fined. He appealed the decision and the sentence. The conviction was upheld and the fine was reduced. He sought leave to appeal from the Court of Appeal for Ontario. The motion for leave was dismissed.

He then filed a complaint with the Review Council. He said that the case was most likely the worst abuse of process in the Province of Ontario. He stated that the outrageous fines were unlawfully imposed and that the charges were fabricated.

He argued that the trial and prosecution were a horror story of abuse of process, negligence, misrepresentation to fabricate falsified facts and evidence based upon previous false presentations to the courts to defeat justice by the prosecutors. He

expressed his disagreement with a decision by His Worship denying his application to quash the search warrant.

He disagreed with a decision by His Worship to refuse to recuse himself from the trial and a decision by His Worship to make an order that it was peremptory on the complainant to proceed with the trial. He alleged that he was not permitted to make submissions prior to the issuance of the order. He alleged that his rights under section 7 of the *Charter* to make full answer and defence were infringed.

Further, he alleged that His Worship was biased and showed questionable conduct throughout the trial which was based upon fabrications and misrepresentations of the prosecutors.

The complaints committee reviewed the letter of complaint that set out his allegations. He had also provided a binder containing numerous materials related to the trial and excerpts of transcripts of the trial, the appeal and other proceedings. One member of the committee went through the materials in the binder and reported to the other two members. All members read the justice of the peace's reasons for judgment and the reasons for judgment of the appeal judge of the Superior Court of Justice. The committee also reviewed the endorsement of the Court of Appeal for Ontario containing the decision to refuse the application for leave to appeal.

The committee noted that the complainant provided information and materials that related to the evidence given during the trial. The jurisdiction of the Justices of the Peace Review Council is limited to the investigation and review of complaints about conduct. The Review Council has no legal authority to change a decision made by a justice of the peace.

The committee found that most of the allegations and the materials submitted to the Council by the complainant related to how the justice of the peace assessed the evidence, interpreted and applied the law, and decided the issues in the court case including, but not limited to, the explanation of whether in law the offences were absolute liability or strict liability; the decision as to whether an adjournment should be granted; issues related to the search warrant and the decision regarding recusal; alleged errors in the facts; the adequacy of reasons for the decisions; the decision that the matter would be marked peremptory; and, the conclusions drawn after various submissions.

The committee observed that the assessment of evidence, the determination of issues in a trial, and decisions made by a justice of the peace in a case are matters of judicial decision-making made in the course of a justice of the peace's duties outside of the jurisdiction of the Review Council and are not matters of conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to interfere with or change a decision of a justice of the peace.

The committee noted that the complainant argued that His Worship's comments that the offences were of absolute liability suggested that he had pre-determined the case. The committee observed that the comments made by His Worship in that regard reflected his interpretation and explanation of the law, not an indication that he had pre-determined the outcome. The appeal judge addressed this issue and held that although His Worship's categorization of offences was wrong in law, there was no substantial wrong or miscarriage of justice as a result of that decision.

The committee observed that the complainant raised allegations about the transcript. The committee noted that the appeal judge had already addressed the adequacy of the transcript and found that the complainant was unable to show that anything was missing from the transcripts. As well, the appeal judge addressed the fact that a paragraph was added to the transcript that was not included in the oral reasons given in court. The appeal judge referred to the case *R. v. Wang*, [2010] O.J. No. 2490 (Ont. C.A.) which stated:

> [12] If unforeseen circumstances arise such that, after delivery of reasons that were meant to be final, a trial judge wishes to correct or supplement the reasons that were already delivered, various options are available. These include the issuance of an addendum, providing supplementary reasons or, when the original reasons were oral, subsequently issuing a set of amended reasons, written or oral. Candour and transparency are however, essential. Where changes or additions are made to the reasons, counsel as well as any reviewing court should have a clear record of what occurred and be in a position to opine as to the legal effect, if any, of the changes or additions made by the judge.
>
> [13] In fairness to the summary conviction appeal judge in the present case, the additions and changes made to the reasons simply elaborated on the reasons delivered orally. In my view, the fact that changes were made to the transcript

> rather than through the issuance of supplementary reasons has no impact on the outcome of the present appeal. Regardless of which set of reasons this court were to review, the outcome would be the same.

The appeal judge found that the addition of the paragraph in the transcript was clearly made by the justice of the peace. He noted that there was a clear record of this fact, indicated by a statement in the transcript that the paragraph was inserted at the request of the justice of the peace and did not form part of the original decision, and it was indicated by a box around the paragraph. The appeal judge held that the additions and changes to the reasons were clearly made by His Worship to supplement the oral reasons that he had previously given in court and the fact that the changes were made to the transcript rather than through the issuance of supplementary reasons had no impact on the outcome of the appeal. As well, the appeal judge found that the additional paragraph added in the reasons did not show bias on the part of the justice of the peace or provide any basis for a reasonable apprehension of bias.

The committee noted that the appeal judge concluded that there was no evidence of bias or any basis for a reasonable apprehension of bias on the part of His Worship.

After completing its investigation, the complaints committee concluded that the complaint should be dismissed on the basis that it was outside of the jurisdiction of the Council and the file was closed.

CASE NO. 26-003/15

The complainant appeared for trial before a justice of the peace in relation to a charge under the *Highway Traffic Act*.

The complainant indicated that there were four matters for trial before the presiding justice of the peace. The complainant alleged that His Worship addressed the body of the court and spoke about the difference between what the defendants may have done to get a ticket and evidence. The complainant alleged that he observed His Worship say, "If you continue to trial, the amount on your ticket is no longer in play. I will go by the book and it could be as much as $1,000." The complainant alleged that His Worship's behaviour was fear mongering and that it had put fear in the members of the public to change their pleas.

He also said that he had not properly filed his motion alleging a *Charter* violation and he questioned whether the justice of the peace should have offered an adjournment to him so that he could file his documents correctly.

The complaints committee reviewed the complaint letter. With regard to the question as to whether the complainant should have been offered an adjournment to file documents, the committee noted that His Worship's decision constituted judicial decision-making in the course of a justice of the peace's duties which was outside of the jurisdiction of the Review Council, not a matter of judicial conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Review Council has no legal authority to change a decision made by a justice of the peace.

The committee ordered and reviewed the transcript of all matters before His Worship during the particular court session.

The committee observed that the transcript did not show that His Worship made the remarks that were alleged in the complainant's letter. The committee noted that the transcript showed that he explained that under the *Highway Traffic Act*, there are certain sections that allow for the penalty to be increased and he provided examples. He also explained that if the evidence presented in a trial by a police officer showed that the speed driven by a defendant was higher than the speed on the ticket, the prosecutor had the right to ask for an amendment to the higher speed. The transcript did not show that he said: "I will go by the book and it could be as much as a $1,000.00." After reviewing the transcript, the committee concluded that the introductory comments made by His Worship to the defendants were an explanation of the law and the process, rather than a means of pressuring defendants into a plea of guilt. The committee noted that justices of the peace recognize that self-represented persons who are not familiar with the court process frequently appear before them in provincial offences court. Justices of the peace routinely provide them with explanations about the court process and possible outcomes. The committee observed that His Worship's comments appeared to be helpful information for defendants appearing before him and not fear mongering. The committee found that His Worship's manner was appropriate.

The committee found no evidence of misconduct on the part of His Worship toward the complainant or any other defendant appearing before His Worship during the tier in question. The complaints committee dismissed the complainant and the file was closed.

Case Summaries

CASE NO. 26-004/15

The complainant appeared before a justice of the peace for a pre-enquête in which the complainant attempted to have criminal process issued against his family member. In his letter of complaint, the complainant alleged that His Worship did not regulate the Crown Attorney's behaviour in court. He felt that the Crown Attorney asked irrelevant questions about the complainant's finances. He alleged that His Worship permitted the Crown Attorney in his final submissions to make defamatory remarks, referring to the complainant's mental health as "one that is crazy". He also alleged that His Worship allowed the Crown Attorney to distort the facts and allowed him to read partial wording from the *Criminal Code* in his closing statements to "twist them for his own purpose and not for the purpose for which they were written".

He further alleged that His Worship did not fulfill his judicial duties and allowed the hearing to become "more of a judicial circus than a hearing where justice may have been served." He suggested there was a lack of civility.

He alleged that His Worship made defamatory remarks in his closing statements when he referred to the complainant as "crazy". He alleged that His Worship said, "he could tell that I was crazy". The complainant states that the comments and the decision not to issue criminal charges were inappropriate. He questioned His Worship's capacity to understand the matters and alleged that His Worship was rude.

The complaints committee reviewed the complainant's letter and ordered and reviewed the transcript of the proceedings before His Worship. The committee found that the transcript showed that the Crown Attorney asked questions in cross-examination of the complainant in relation to his family's concerns about his mental health and about assessments of his mental health that had taken place. The committee observed that it was part of the role of the Crown Attorney to bring forward information through cross-examination that he felt was relevant in the case. Part of that role was to make submissions on the evidence and the credibility of witnesses, and to refer the Court to aspects of the law that he thought were relevant.

The committee found that the court record did not support the complainant's allegation that His Worship referred to the complainant as one that is "crazy". The committee found that the transcript showed that as part of his assessment of the evidence, His Worship referred to the fact that evidence was before him that the complainant had a mental

illness or disability. The committee noted that a justice of the peace's assessment of the evidence and determination of the issues are matters of judicial decision-making, not matters of conduct. The Council's legislated jurisdiction is limited to the conduct of justices of the peace. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The committee found there was no support for the allegation that His Worship did not fulfill his judicial duties or that there was a lack of civility. The committee found that the transcripts showed that His Worship conducted himself and the proceeding with proper decorum and civility throughout the entire proceeding.

The complaint was dismissed and the file was closed.

CASE NO. 26-005/15

The complainant appeared before the justice of the peace for a pre-enquête. A pre-enquête is a proceeding to determine whether an Information should be laid against a person at the request of another person. In his letter of complaint, the complainant said that Her Worship denied the application to have charges laid against lawyers and she said that there was no evidence to support the offence. He said that Her Worship refused to consider the evidence that he attempted to present and that as soon as he told her that the accused were lawyers, she made her ruling and dismissed his application. The complainant submitted a copy of his application for *Commencing a Proceeding for a Private Information* along with his letter of complaint.

The complaints committee read his letter and the enclosures that he included with his letter. The committee ordered and reviewed the transcript and the audio recording of the proceeding. The committee found that the transcript and audio recording showed that Her Worship took the time to ensure that she understood what the complainant was seeking and she gave him the opportunity to clarify his position. The committee observed that Her Worship was extremely helpful. The transcript showed that she lent her copy of the *Criminal Code* to the complainant and granted a recess to provide him with time to review the law. She patiently explained the law and her decision that there was no basis in law to grant his application.

The committee concluded that the complaint related to the complainant's disagreement with the justice of the peace's decision to deny his request to have the charges laid. The committee noted that the Council has no jurisdiction over judicial decision-making. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867.* The Council's legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no discretion to change a justice of the peace's decision or to act on complaints that do not fall within its jurisdiction. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The committee dismissed the complaint on the basis that it was outside of the jurisdiction of the Council and closed the file.

CASE NO. 26-006/15

The complainant appeared before His Worship on behalf of a business in relation to an offence under the *Highway Traffic Act.* In his correspondence, the complainant said that he observed this justice of the peace during two sessions of court on two different dates. On the first date, the case wasn't reached and it was adjourned. On the second date, he entered a plea of guilt.

He alleged that His Worship pressured defendants to plead 'not guilty' with "nefarious intent" to impose a higher fine. He alleged that during his proceeding, the prosecutor recommended a minimum fine and His Worship was disappointed that a higher fine could not be imposed. The complainant alleged that His Worship attempted to "dupe" him into changing his plea. He said that His Worship's intent was to intimidate other defendants from offering explanations or putting up defences. He asserted that His Worship overlooked valid reasons to further reduce fines and imposed the maximum fine.

The complainant alleged that His Worship was belligerent toward a lawyer who said he had not received disclosure. The complainant also said that the justice of the peace and the prosecutor had larger photographs than defendants of the scenes where offences were said to occur.

Case Summaries

The complaints committee read the letter of complaint and ordered and reviewed the full transcripts of both sessions when the complainant's case was scheduled.

The committee found that the transcripts did not support the allegation that His Worship was belligerent toward a lawyer.

The committee noted that the transcript showed that His Worship allowed a defendant to have an adjournment so that he could see the larger photograph applicable to his case. His Worship also provided the complainant with an opportunity to see the larger photograph before proceeding with his case. The committee noted that evidence and concerns about how His Worship assessed the evidence related to decisions made in the course of a justice of the peace's duties, not allegations of judicial misconduct. The committee concluded that these were matters of judicial decision-making which were outside of the jurisdiction of the Council. The Council has no discretion to act on matters that do not fall within its jurisdiction.

The committee noted that the transcripts did not support the allegation that His Worship pressured defendants to enter a 'not guilty' plea with "nefarious intent" to impose a higher fine.

The committee observed that the transcript of the complainant's guilty plea proceeding did not support the allegation that His Worship attempted to "dupe" the complainant into changing his plea. The committee noted that although the complainant thought that His Worship's intent may have been to intimidate other defendants from offering explanations or putting up defence, the transcript showed that His Worship explained which parts of the explanations proffered he felt aggravated or mitigated the sentence to be imposed. The committee noted that the decisions on sentence were matters of judicial decision-making outside of the jurisdiction of the Council. The Council has no discretion to act on matters that do not fall within its jurisdiction.

The committee dismissed the complaint and the file was closed.

Case Summaries

CASE NO. 26-007/15

The complainant appeared before a justice of the peace for trial on a charge under the *Highway Traffic Act.* In his letters to the Council, he alleged that His Worship repeatedly interrupted his questions, not allowing him to put forward his defence. He said that as a result, the police officer's testimony went virtually unchallenged. He believed that his evidence and that of his witness" fell on deaf ears" and the verdict was predictable in the first ten minutes.

The complainant also said that at the commencement of his trial, His Worship stated that he only wanted the facts as they related to this incident, yet he supported the guilty verdict with hypothetical scenarios of events that could have happened.

He alleged that His Worship conducted the courtroom in a manner that wasted everyone's time. He said that the following three requirements of a fair trial were not provided to him:

1. He did not have a full opportunity to question the police officer to his satisfaction so that all of his questions were asked and answered.
2. He did not feel His Worship listened to his testimony with a fair and open mind.
3. His Worship did not explain why His Worship believed the officer's version of the charge and how the complainant's actions ran afoul under the section under which he was charged.

He concluded by stating that His Worship's responsibility is to "run his courtroom in a fair and professional manner. He dropped the ball." He informed the Council that he had successfully appealed the decision.

The committee found no evidence in the transcript of the trial to support the allegations of inappropriate conduct on the part of His Worship. The committee observed that the transcript showed that at the outset of the trial, His Worship provided an explanation of the process. The committee noted that it is a responsibility of a justice of the peace to provide such an explanation. The committee found that the transcript showed that His Worship was helpful, polite and professional throughout and he provided the complainant with the opportunity to ask questions and to put forward his defence. His Worship appeared to listen carefully to the evidence and he interjected briefly to remind

the complainant to ask questions, to keep him focused on the relevant evidence and to clarify points in the evidence.

The committee concluded that the remaining allegations related to how His Worship assessed the evidence and decided the case, and to whether he gave adequate reasons for his decision. The committee observed that these were matters of judicial decision-making made in the course of a justice of the peace's duties outside of the jurisdiction of the Review Council, not matters of conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867.* An appeal court is the body with jurisdiction to review such matters and determine whether there were errors.

The committee dismissed the complaint on the basis that the allegations related to conduct were not supported by the transcript and the remaining allegations were outside of the Council's jurisdiction. The file was closed.

CASE NO. 26-010/15

The complainant appeared before the justice of the peace for a trial on a charge under the *Highway Traffic Act.* The complainant was convicted of the offence which resulted in a fine.

In the complainant's letter, he stated that he should be exonerated from the conviction because the police officer lied, and the justice of the peace was feeble, and incompetent. He alleged that the justice of the peace sided with the police officer. He wanted the evidence re-evaluated and judgment given. He asserted that he was the only person that did not accept a plea bargain and believed that the justice of the peace "sent him a message" by convicting him of the charge.

The complaints committee read the letter of complaint and ordered and reviewed the transcript of the proceeding. The committee observed that the transcript showed no evidence that His Worship was feeble, incompetent or impartial. The transcript showed that His Worship was helpful and he exercised proper control with both parties, in one occasion interrupting the prosecutor to suggest that a different way of asking a question would be more respectful towards the complainant. The committee found no evidence, in the transcript, that his refusal to accept a plea bargain was a factor considered by His Worship when he made findings and convicted him.

The committee noted that the complainant's concerns about the evidence and the decisions made by His Worship in the case were matters of judicial decision-making outside of the jurisdiction of the Council, not matters of conduct. The Council's legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no authority to change a decision made by a justice of the peace. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

After its investigation, the committee dismissed the complaint on the basis that the concerns about judicial decision-making were outside of the Council's jurisdiction and the allegations about conduct were not supported by the court record. The file was closed.

CASE NO. 26-011/15

The complainant stated in his letter that he took his infant with him to court and the prosecutor agreed to take him first because he had a child with him. The complainant alleged that the justice of the peace told him to stay outside with a rude attitude and he had to wait over an hour. He alleged that when he was called to come into the courtroom, the justice of the peace said, "This is not a playground, it is a work place." He indicated that he told her that he had no-one to look after his son and so he brought him to court. He alleged that Her Worship asked why he brought the child to court and he responded that the child was only a kid and does not understand. The complainant felt that the justice of the peace made a discriminating remark.

The committee reviewed the complainant's letter and ordered and reviewed the transcript and audio recording of the proceeding. The committee observed that the audio recording showed that the child began to make noise in the courtroom, and it was getting louder. The committee found that the court record did not show that Her Worship said it was not a playground. The committee noted that the record showed that after the child began to make noise, the justice of the peace asked him to bring the child next to him. She said that it was a workplace and that they were "on the record". The committee noted that during a court proceeding, a court reporter must make an audio recording of the entire process and that recording becomes the basis for the official record of what occurred and for the transcript of what occurred. A justice of the peace has a responsibility to ensure that the recording can be made accurately.

After listening to the audio recording, the committee concluded that the noise from the child could be seen by Her Worship as distracting and interfering with the making of the record. The committee noted that while Her Worship could have been more courteous in her manner, after she heard the complainant's explanation that he had no-one to look after his child, she accepted the explanation and permitted the child to remain in the courtroom while the proceeding was completed. The committee concluded that there was no judicial misconduct and dismissed the complaint. The file was closed.

CASE NO. 26-013/15

The complainant appeared before the justice of the peace for a trial on a charge of parking in a fire route. The complainant alleged that during the proceedings His Worship was belligerent in tone and condescending. He also alleged that His Worship was dismissive towards him and failed to consider his evidence. He alleged that at one point, His Worship and the prosecutor attacked him simultaneously when he was on the witness stand. He alleged that when he rendered his judgment, His Worship was smiling at him.

The complainant believed that His Worship was spiteful towards him because he did not engage in a pre-arranged guilty plea and that His Worship was, therefore, punitive in his judgment. Further, he alleged that His Worship was a bully. The complainant's perception was that he was not given a fair and unbiased trial.

The committee noted that the complainant disagreed with how His Worship assessed the evidence, determined the issues and decided the case and sentence. The committee observed that the way the justice of the peace applied the law and made decisions in the case were matters of judicial decision-making made in the course of a justice of the peace's duties outside of the jurisdiction of the Review Council, not matters of conduct.

The committee requested and reviewed the transcript and the audio recording of the court proceeding. The committee found that the audio recording showed that His Worship's tone was polite and appropriate. The transcript and the audio recording showed no evidence that His Worship attacked the complainant or that he was spiteful, dismissive, biased or bullying.

The committee noted that before the trial started, the justice of the peace asked the complainant how long the trial would take, and told the complainant that he had to go to a medical appointment. The committee noted that the transcript showed that His Worship

made comments that could be perceived as rushing the trial along. The committee observed that justice must not only be done, it must be seen to be done. The committee decided to invite His Worship to respond to the complaint.

The committee observed that in his response, His Worship explained that he had a medical condition that affected his voice and that he spoke louder in the courtroom. The committee could see that His Worship did not intend to speak roughly or disrespectfully to the complainant. His Worship explained that he may have smiled in a way intended to be appropriate and understanding. His Worship acknowledged that it was inappropriate to comment that he had a medical appointment and he apologized for doing so. The committee could see from the response that His Worship regretted that he left the complainant with the impression that he was rushing the trial or being unfair to him.

After completing its investigation, the complaints committee concluded that there was no evidence of judicial misconduct, dismissed the complaint and closed the file.

CASE NO. 26-014/15

The complainant appeared before the justice of the peace for a trial on a charge under the *Highway Traffic Act*. The prosecutor brought a motion to amend the ticket. The justice of the peace heard submissions from the prosecutor and the complainant, and granted the amendment and adjourned the case to another date for trial.

The complaints committee read the complainant's letter and requested and reviewed a copy of the transcript of the court proceeding. The committee noted that the complainant referred in his letter to the fact that his case was moved from one courtroom to another. The committee observed that it is a common practice for cases to be moved to a different courtroom to assist in managing the number of cases that may be scheduled.

The committee observed that in the complainant's letter, he expressed concern that the prosecutor was "armed" with law when he argued for an amendment to the ticket, and that His Worship permitted the amendment in circumstances where the police officer was not sworn to give evidence. The committee noted that it is the responsibility of a prosecutor to be prepared to argue matters of law. The committee found that the transcript showed that the prosecutor made a motion to amend the ticket and His Worship provided the complainant with an opportunity to make submissions on the issue. The transcript

showed that the case was moved into the courtroom for the motion, and His Worship had other matters before him to complete on that date. He decided to adjourn the matter for trial and he determined that he should not hear the trial, given the information he had already heard during the motion.

The committee noted that if the complainant disagreed with His Worship's decision to grant the amendment or his decision to adjourn the case, the proper way to proceed was through legal remedies in the courts. Matters of judicial decision-making are outside of the jurisdiction of the Council. The Council's legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no authority to change a decision made by a justice of the peace. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

After its investigation, the committee concluded that the transcript showed that His Worship was courteous, helpful, and that he listened attentively to the complainant, and he stopped the prosecutor to ensure that the complainant had an opportunity to make submissions. The committee dismissed the complaint on the basis that the complainant's concerns were about judicial decision-making and outside of the Council's jurisdiction. The file was closed.

CASE NO. 26-015/15

The complainant appeared before the justice of the peace on two occasions in relation to a charge under the *Highway Traffic Act*. In his letter of complaint, he said that he tried to have the ticket quashed and that the justice of the peace left the courtroom, looked up law and then returned and denied the request. He felt that the justice of the peace acted as the prosecutor, doing his job. He said that if the justice of the peace was impartial, she should have also looked up case law in his favour.

He expressed concern that Her Worship stepped down from the case, stating that she may be biased, and adjourned it to another date. He also alleged that he asked questions and Her Worship refused to answer. He indicated that his only alternative to get his questions answered and to find out whether her actions were correct was to make a complaint with the Council.

The complaints committee read his letter and ordered and reviewed the transcripts of both court appearances before Her Worship. The committee noted that the transcript of the first appearance showed that the complainant had tried to make a motion to have the charge dismissed on the basis of a defect on the ticket and on the basis of his right under section 11(b) of the *Charter* to have a trial within a reasonable time.

The transcript also showed that Her Worship made a ruling on his motion to quash the ticket, citing cases in her decision denying the request. The committee noted that a justice of the peace has a duty to make his or her decisions based on his or her understanding of the law and has the discretion to refer to such cases that he or she determines to be applicable.

The committee concluded that there was no evidence that Her Worship acted as the prosecutor; rather, she fulfilled her responsibility of applying and interpreting the law to reach her decision. The committee found that the transcript showed that Her Worship was very helpful to the complainant, explaining the procedural requirements for bringing his motion under the *Charter*.

With respect to the allegation that Her Worship refused to answer his questions at the second appearance, the committee noted that there was no evidence in the transcript of that appearance to suggest that Her Worship refused to answer his questions. On the contrary, the committee observed that the transcript showed that Her Worship was helpful and she answered his questions.

The committee concluded that the complaint related to the complainant's disagreement with the justice of the peace's decision to deny his request to quash the ticket and with her decision to recuse herself from hearing his case. The committee noted that the Council has no jurisdiction over judicial decision-making. Nor does the Council have authority to order a justice of the peace to answer questions to explain his or her reasons for decisions. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no discretion to change a justice of the peace's decision or to act on complaints that do not fall within its jurisdiction. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The committee dismissed the complaint on the basis that it was outside of the jurisdiction of the Council and closed the file.

CASE NO. 26-019/15

The complainant, a lawyer, made a complaint about a justice of the peace who was presiding in bail court. The complainant was scheduled for matters before a judge for other matters, including a sentencing of a person who was in custody. Matters were spoken to in the courtroom of the judge and the complainant learned for the first time that a client was in custody and was scheduled for a bail hearing.

The complainant then went and spoke to a Crown Attorney about the client's bail hearing and was advised that it would be a contested bail hearing and that there was another matter to be heard. The complainant understood that the other matter would proceed first, and he advised that he would be available by noon as he had to return to the other court for a sentencing. The Crown Attorney undertook to inform the Court of that information.

The sentencing concluded before noon and when he re-attended bail court he was informed that Court was on recess until 1:00 p.m. Shortly before 1:00 p.m., the complainant was informed that his client's matter had proceeded in his absence and that His Worship was displeased about his absence. He alleged that, "I was not prepared for the vehement, even hostile manner in which I was addressed by the Justice of the Peace. The Justice of the Peace had no basis for representing to those present in court, including [the prospective surety], that I had not given proper priority to [redacted name] the matter."

The complainant alleged that the justice of the peace made comments to him about his unavailability for bail court that were unfair, intemperately expressed and without foundation. He alleged that the justice of the peace represented that, in the future, he would have Duty Counsel speak to the complainant's matters in his absence. He alleged that the conduct of His Worship risked undermining the confidence of his client and his surety in choice of counsel. He also alleged that His Worship's conduct risked undermining the integrity of the court's authority on the basis that if His Worship had proceeded with the bail hearing and decided to deny bail, it may have appeared that the justice of the peace had permitted his attitude about counsel to affect his impartiality towards the client. The complainant said that for those reasons, he had requested that

His Worship recuse himself. He alleges that His Worship then told him to get out of the courtroom. Duty Counsel spoke to the matter and adjourned it to the following day.

The complainant ordered the court record and sent it to the Council. The complainant indicated that in the meantime, he would not appear before His Worship in any matter because he was afraid that His Worship's attitude towards him might be thought to have affected his impartiality towards his clients.

The complaints committee reviewed the transcript and the audio recording of the proceeding before His Worship.

The committee noted that it is not uncommon for justices of the peace presiding in bail court to wait for lawyers held up in other courts on scheduled matters. In this case, the lawyer was completing a scheduled in-custody sentencing hearing. The committee observed that sentencing matters, particularly where the accused is in custody, are frequently given priority, delaying a lawyer's attendance in bail court to deal with those matters. The committee also noted that accused persons should be permitted to exercise their right to counsel by being represented by a lawyer whom they choose.

The committee observed that the transcript and audio recording showed that His Worship spoke negatively about the complainant in his absence and made comments that were critical of him in circumstances where he was not present to provide information to explain the circumstances or to make any submissions in his defence. The committee noted that the court record also showed that after he arrived, His Worship made comments that suggested he was making assumptions without providing the complainant with an opportunity to provide the full history of the events or to make proper submissions. The committee noted that when the complainant requested that His Worship recuse himself from the matter, he failed to give the complainant or the Crown Attorney an opportunity to make submissions on that motion and told him to leave the courtroom.

The committee noted the Preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* which states:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and

> integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The committee noted that a justice of the peace has a duty to accord the parties the full right to be heard according to law and to conduct a fair hearing. He or she must conduct himself or herself in a manner that is consistent with the appearance that he or she is discharging his or her duties in a manner that is independent and impartial. The committee noted that it is important that justice is not only done, but that it is seen to be done.

The committee invited His Worship to respond to the complaint. The committee noted that with his response, His Worship provided a copy of a practice memorandum applicable to bail hearings in the jurisdiction. His Worship explained that his paramount concern that the complainant's client was in custody and that the bail hearing should be dealt with as expeditiously as possible.

The committee noted that His Worship's response showed that he had reflected upon his conduct and recognized that neither the practice memorandum nor his concern for an expeditious bail hearing justified his conduct or intemperate comments. He appreciated that he should have handled the matter differently.

The committee could see from the response that His Worship regretted his comments and conduct towards the complainant. The committee noted that His Worship acknowledged that he had made inappropriate assumptions about the circumstances and that he should have refrained from criticizing the complainant in his absence. He recognized that he should have refrained from drawing conclusions until the complainant had the opportunity to provide an explanation of the circumstances. His Worship agreed that he should have asked both counsel to make submissions on the motion for a recusal before deciding upon the motion. As well, His Worship fully agreed that a defendant has a right to be represented by counsel of his or her choice and appeared to regret telling the complainant to leave the courtroom.

The committee was of the view that His Worship had learned from the experience and he would conduct himself differently in the future. The committee was satisfied that he would be more mindful that justice must not only be done, it must be seen to be done. The committee dismissed the complaint and closed the file.

Case Summaries

CASE NO. 26-020/15

The complainant appeared before the justice of the peace in provincial offences court on a ticket for parking in an accessible spot. In his letter to the Council, he said that he met with the prosecutor before his appearance and the prosecutor advised him that his fine would be reduced. The complainant had done research and thought there should be more signage requirements. He stated that when his case was called, he wanted to put context around his actions and the justice of the peace said that if he pleaded guilty, his fine would be reduced or that if he had a trial, it could also be increased as an additional offence could potentially be added.

The complainant indicated that this felt like a veiled threat with the purpose to intimidate. He said he felt that his decision to plead guilty was made for him at this point. He disagreed that the parking spot would qualify as an accessible spot. He indicated that the fine was reduced.

The complainant stated that the entire process "left a bad taste in my mouth". He said that he felt that there was a real desire to incentivize people to plead guilty in order to secure some fine amount. To him, the process appeared to be more about revenue stream than protecting the rights of the disabled. He said that he felt at a disadvantage when confronted by a prosecutor and a justice of the peace. He said that the process should allow for an individual to state their case and provide their evidence prior to a deal being offered so that the offer can be contingent upon the gravity of the situation.

The committee reviewed the complainant's correspondence and reviewed the transcript and the audio recording.

The committee decided to invite His Worship to respond to the complaint.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations are handled and individuals are treated in the future.

The committee noted that in His Worship's response, he explained that he did not intend to inhibit the complainant in his presentation of what occurred, nor did he intend to intimidate him. His Worship extended his sincere apology to the complainant for any deficiencies

in how the matter was conducted. His Worship also explained to the committee how he could approach matters in a better manner in the future.

After considering all of the evidence gathered during the investigation, the committee concluded that the evidence did not support a finding of judicial misconduct. The committee dismissed the complaint and closed the file.

CASE NO. 26-021/15

The complainant and his representative, a licensed paralegal, appeared before His Worship for a trial under the *Highway Traffic Act*.

The complainant alleged that the justice of the peace treated everyone, including him and his legal representative with an attitude and apparent bias that was highly improper and very alarming. The complainant alleged: "To the public, JP (name)'s ruling was really a 'misrepresentation of the facts', and his conduct was clearly contrary to the *Act*." The complainant informed the Council that he had successfully appealed the decision and included a copy of the judgment of the appeal judge and evidence related to the trial with his letter of complaint.

The complaints committee reviewed the correspondence from the complainant. The committee also ordered and reviewed the transcript of the trial proceeding. Further, the committee listened to the audio recording of the appearance before His Worship when he and his representative were in court for trial.

The committee noted that decisions made by His Worship during the court proceeding were matters of judicial decision-making outside of the jurisdiction of the Council. If a person is of the view that a justice of the peace made errors in assessing the evidence or determining any of the issues, the proper way to proceed was through an appeal, and the complainant had done that.

The committee observed that the transcript and audio recording suggested that His Worship was condescending, impatient and sarcastic towards the complainant's legal representative. The committee noted that a justice of the peace is expected to be patient, dignified and courteous to the litigants and persons in the courtroom. A justice of the peace is the exemplar and guardian of the dignity of the court. The committee observed

that a commentary in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

> Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

The committee understood that the courtroom can be a demanding place with a busy docket. The committee noted that regardless of how busy a court is, there is an obligation on every justice of the peace to fulfill his or her responsibilities as a justice of the peace and to uphold the high standards of conduct that apply to justices of the peace. Judicial officers must be aware of the appearance created by their conduct. They must not only be impartial – but they must also give the appearance of being an example of impartiality, independence and integrity.

The committee invited His Worship to respond to the allegations. The committee received and considered his response.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations and individuals are treated and handled in the future. The committee observed that the response from His Worship showed that he had carefully reflected upon the manner in which he conducted himself. He took full responsibility for his behaviour towards the defendant and the legal representative, and sincerely regretted his conduct. He also explained that he had personal circumstances that were affecting him at the time of the trial, while also acknowledging that this did not excuse his conduct. The committee could see that His Worship recognized that as a justice of the peace, he must be careful to ensure that personal circumstances do not impact his conduct in the courtroom in the future. The committee observed that His Worship had learned from the complaint and he would strive to meet the high standard of conduct expected of justices of the peace.

The committee noted that His Worship expressed a sincere apology to the complainant for his comments and conduct, and for the negative impression of the justice system that was left with him and his legal representative.

The committee concluded that no further action was required by the Review Council. The committee dismissed the complaint and the file was closed.

Case Summaries

CASE NO. 26-022/15

The complainant appeared before a justice of the peace for a trial on a charge under the *Highway Traffic Act*. The complainant made numerous allegations, including:

- Her Worship found him guilty as charged and punished him by doubling his penalty because he decided to exercise his right and go to trial.
- Her Worship decided to proceed in the absence of his interpreter. Because of that, he was unable to respond when the prosecutor argued for double the penalty. The complainant alleged that there was a significant violation of his right to have a certified interpreter present during the trial.
- Her Worship refused to consider certain evidence that was critical to his defence.
- Although the police officer did not put forward certain evidence and did not remember certain events on the date of the offence, Her Worship accepted that as proof of his guilt.
- Her Worship believed another witness' testimony, even though that witness had a high interest in the outcome of the trial because she was suing him.
- Her Worship did not believe the complainant's words and stated that any doubt should have been decided in favour of the defendant.
- Her Worship believed a witness who allegedly lied while giving testimony.
- Her Worship did not have real proof and found him guilty as charged, and violated the presumption of innocence.
- Her Worship told him it was his responsibility to bring a witness to court and that it was his fault if he let the witness go. The complainant alleged that the other person involved in the accident told the witness she did not need him and he left the scene of the accident.

The complainant alleged that Her Worship violated his legal and human rights, and she harassed him during the trial. He stated that ordering a transcript for an appeal and retaining a paralegal to represent him would be expensive and it wouldn't make economic sense to fight the ticket.

Case Summaries

The committee ordered and reviewed the transcripts of the complainant's trial and of the justice of the peace's Reasons for Judgment and sentencing.

The committee noted that the transcripts showed that the complainant was represented by an agent at each of the appearances. The transcripts also showed that an interpreter was present during the trial. The committee found no evidence to support the allegation that the justice of the peace harassed the complainant. Rather the committee found that the transcripts showed that Her Worship was polite and attempted to be helpful in conducting the proceedings.

The committee observed that the transcript showed that when the matter resumed for the justice of the peace to give her Reasons for Judgment, a certified interpreter was not present. Her Worship offered to change the date to a time when a certified interpreter was present. The committee noted that the agent for the complainant said it was not a trial and asked if he could translate. He said that he was fluent in both languages and able to translate simultaneously. The agent also said that the complainant understood English for the most part and that he only had a problem in speaking the language. The committee noted that the justice of the peace questioned the agent on his ability to act as an interpreter, and when she was satisfied that he could fulfill that function adequately, said that she would speak slowly in giving her Reasons for Judgment so that they would both understand. After considering all of the circumstances, the committee concluded that Her Worship's decision to grant the agent's request to interpret was not judicial misconduct. The committee also noted that her decision was a matter of judicial decision-making outside of the jurisdiction of the Council.

The committee noted that the transcript showed that the complainant's agent made submissions on sentence. The committee concluded that the complainant was not denied an opportunity to respond to the prosecutor's submissions on sentence.

The committee concluded that the remaining allegations related to how Her Worship weighed the evidence and made findings of fact and to the complainant's disagreement with Her Worship's decisions. Such matters are outside of the jurisdiction of the Justices of the Peace Review Council. The Council's jurisdiction is limited to the conduct of justices of the peace. The Council has no discretion to change a justice of the peace's decision or to act on complaints that do not fall within its jurisdiction. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level

court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

For the reasons noted, the complaints committee dismissed the complaint and closed the file.

CASE NO. 26-023/15

The complainant wrote a letter of complaint about a justice of the peace who presided over a bail hearing.

In his letter, the complainant explained that his daughter was the surety for an accused person who was charged with Breach of Recognizance. The complainant said that his daughter and the accused were in a relationship and they were parents to a young child. He described the relationship between his daughter and the accused as volatile.

He expressed dissatisfaction that Her Worship released the accused to the main witness to the criminal charge of Breach of Recognizance and made it a condition that he must live with her and her baby. The complainant stated that in his opinion, "...the message being sent by the presiding justice of the peace in releasing an accused to the primary witness/victim is loud and clear. It glaringly screams of the fact that these breaches are not serious in nature."

He stated that Her Worship failed to impose a condition of drug testing and monitoring, and a condition barring the accused from being alone with a young child. He expressed the belief that Her Worship showed no concern for anyone's safety.

The complainant concluded that Her Worship's lackadaisical, careless, and negligent actions had jeopardized any reasonable prospect for conviction. He said that he lived in constant fear that bodily harm would be inflicted on his grandson.

In a letter sent to the complainant to acknowledge the complaint, the Registrar explained that the Council had no authority to intervene to protect a child. The complainant was provided with contact information for offices that could assist if he had concerns that the child was at risk, including the Crown Attorney's office, the police and the Children's Aid Society.

The complaints committee reviewed the letter of complaint, and ordered and reviewed the transcript of the proceeding. The committee found no evidence in the transcript to support the allegations that Her Worship was lackadaisical, careless, or negligent. The committee observed that the transcript showed that Her Worship was patient and thoughtful in making her decision based on the evidence before her.

In his letter, the complainant also expressed his disagreement with Her Worship's assessment of the evidence given by his daughter and with the conditions upon which the accused was released. The committee noted that Her Worship's assessment of the evidence and her decisions on the terms of release were matters of judicial decision-making which were outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction.

The complainant was provided with information about the Law Society Referral Service which could provide the name of a lawyer who could provide a free consultation of up to 30 minutes to answer any questions the complainant may have about whether the conditions of the recognizance could be changed.

The committee dismissed the complaint and the file was closed.

CASE NO. 26-026/15

The complainant appeared before a justice of the peace for a pre-enquête. (A pre-enquête is a proceeding before a justice of the peace to determine whether a criminal charge should be laid against a person.) He alleged that the conduct of the justice of the peace was abominable and that she refused to consider his evidence. He alleged that Her Worship interrupted him so that he could not respond fully and she ignored his evidence. He alleged that she rushed the hearing so that it could be concluded in one hour and she required him to repeat his testimony several times because she could not grasp simple statements of fact. He disagreed with her decision to refuse to issue criminal process.

The complaints committee reviewed the letter of complaint, the enclosures which the complainant provided and the correspondence that he subsequently sent to the Council's office in relation to his complaint about Her Worship. The committee ordered and reviewed the transcript of the proceeding.

The committee found no evidence in the transcript to support the allegations of inappropriate conduct on the part of Her Worship. The committee observed that the transcript showed that at the outset of the proceeding, Her Worship explained the purpose of a pre-enquête, and she was helpful and patient throughout the proceeding. The committee observed that the transcript showed that Her Worship did not rush the complainant or the case, and she provided him with the opportunity to put forward his position. The committee noted that when Her Worship interrupted him, she did so in the course of carrying out her duties to clarify her understanding of the facts, his arguments and the evidence or to keep him focused on the relevant matters and the matter before the Court.

The committee concluded that the remaining allegations related to how Her Worship assessed or made decisions on the evidence, and/or how she decided the case. The committee observed that these were matters of judicial discretion and decision-making outside of the jurisdiction of the Review Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. A higher level of court is the body with jurisdiction to review such matters and determine whether there were errors. The Council's jurisdiction is limited to the review of judicial conduct.

After carrying out its investigation, for the reasons set out above, the committee dismissed the complaint. The file was closed.

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APPENDIX B

POLICY ON EXTRA-REMUNERATIVE WORK AND APPLICATIONS CONSIDERED

Note:
This version of the procedures reflects decisions of
the Review Council up to December, 2015.
For current procedures, please see the Review Council's website at:

www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/

Policy on Extra-Remunerative Work and Applications Considered

POLICY OF THE JUSTICES OF THE PEACE REVIEW COUNCIL RE: EXTRA-REMUNERATIVE WORK

CRITERIA & PROCEDURE FOR APPROVAL

1) Effective January 1, 2007, all justices of the peace, whether presiding or non-presiding, are required to seek the written approval of the existing Justices of the Peace Review Council before accepting or engaging in any extra-remunerative work, in accordance with section 19 of the *Justices of the Peace Act,* as amended January 1, 2007.

s. 19; subs. 8(2)(e)

2) All such applications to the Justices of the Peace Review Council will be considered by the Review Council at the earliest possible opportunity and the justice of the peace will be advised of its decision, in writing.

Application Procedure

3) An application for such approval must be made by the justice of the peace to the Justices of the Peace Review Council, in writing, prior to accepting or engaging in other extra-remunerative work and must set out a detailed explanation of the activity for which approval is sought, an estimate of the time commitment required and the amount of the remuneration. The applicant must also address in his or her letter each of the criteria indicated below that will be considered by the Review Council.

4) This application must be accompanied by a letter from the relevant Regional Senior Justice of the Peace providing his or her opinion with respect to any concerns about potential impacts related to scheduling and the applicant's assignment of duties.

Policy on Extra-Remunerative Work and Applications Considered

5) The Council looks at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's Extra-Remunerative Policy are considered.

6) The following are some of the criteria which should be addressed by the applicant in the letter of application and which will be considered by the Review Council in assessing whether or not approval will be granted:

   a) whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought; *(examples of potential conflict of interest include: employment by government in any capacity related to the administration of justice, the courts or corrections, engagement in the practice of law, employment in a legal clinic or a law firm, etc.)*

   b) whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned;

   c) whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

The Council has noted that the criterion in paragraph c) above must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act*, 2006, S.O. 2006, c. 21. The amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Policy on Extra-Remunerative Work and Applications Considered

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act,* 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice,* the Review Council has determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work.

The Review Council has approved some applications for approval to engage in extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's procedures, an applicant who seeks approval to engage in commercial activity should address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

Additional Information

7) If upon its review of the application, the Review Council is not satisfied that there is sufficient information, the Review Council may request such additional information as the Review Council may deem necessary and relevant, including information from the justice of the peace, the Regional Senior Justice of the Peace or any other person.

Approval of Application without Conditions

8) If, upon its review of the application and any additional material, the Review Council is satisfied that there is sufficient information to approve the application, without conditions, the Review Council will approve the application. The applicant justice of the peace will be advised in writing of the decision of the Review Council, including brief reasons for the decision.

Policy on Extra-Remunerative Work and Applications Considered

Opportunity to Respond to Concerns

9) If, upon its review of the application and any additional information, the Review Council has concerns about granting the application, the Review Council will provide a letter to the applicant justice of the peace setting out its concerns. The Review Council may also suggest conditions of approval to address those concerns.

10) The justice of the peace will be given an opportunity to respond to the concerns of the Review Council and to respond to any suggested conditions by sending submissions in writing to the Review Council. If the justice of the peace agrees with the conditions, he or she should respond to the Review Council confirming his or her agreement with the approval being contingent upon the conditions.

11) The justice of the peace will be given thirty calendar days to respond from the date of the letter from the Review Council expressing its concerns. If a response is not received from the applicant justice of the peace within that time, the Review Council members considering the request will be notified and a reminder letter will be sent to the justice of the peace. If no response is received within ten calendar days from the date of the reminder letter, the Review Council will proceed in the absence of a response.

Decision

12) The Review Council will consider the response of the justice of the peace, if any, in making its decision. The justice of the peace will be advised in writing of the Review Council's approval of the application and of the conditions, if any, upon which the approval is contingent. In the alternative, the justice of the peace will be advised in writing that the request has not been approved. Brief reasons will be provided for the decision.

No Authority to Order Compensation for Legal Costs

13) The Review Council does not have legislative authority to recommend or order compensation for costs of legal services incurred as a result of an application for extra-remunerative work.

Policy on Extra-Remunerative Work and Applications Considered

Application Process in Private

14) Any meeting of the Review Council regarding applications for extra-remunerative work shall be conducted in private. Pursuant to section 8(18) of the *Justices of the Peace Act,* the Review Council has ordered that any information or documents relating to any meeting of the Review Council to consider an application to engage in extra-remunerative work are confidential and shall not be disclosed or made public.

subs. 8(18)

Quorum of Review Council

15) The usual rules for composition and quorum apply to meetings for the purposes of considering applications for extra-remunerative work. The Chief Justice of the Ontario Court of Justice, or in his or her absence, the Associate Chief Justice Co-ordinator of Justices of the Peace, shall chair meetings held for the purposes of considering applications for extra-remunerative work. Six members of the Review Council, including the chair, constitute a quorum for the purposes of dealing with an application for approval of extra-remunerative work. At least half of the members present must be judges or justices of the peace. The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

subs. 8(7),(8) and (11)

Annual report

16) After the end of each year, the Review Council shall make an annual report to the Attorney General on its affairs including a summary of each application for approval of extra-remunerative work received or dealt with during the year and the decision of the Review Council, but the report shall not include information that might identify the justice of the peace or the Region in which he or she presides.

subs. 9(7)

Amended at Toronto, June 4, 2010.

Policy on Extra-Remunerative Work and Applications Considered

APPLICATIONS FOR APPROVAL OF EXTRA-REMUNERATIVE WORK IN 2015

Applications for approval of extra-remunerative work are given File names starting with ER indicating the nature of the application, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., File No. ER-26-001/15 was the first application for approval in calendar year 2015).

Names of applicants are not included in the case summaries.

CASE NO. ER-26-001/15

The Justices of the Peace Review Council approved an application for approval to engage in extra-remunerative work teaching one course at a university.

The Review Council was informed by the Regional Senior Justice of the Peace that the teaching position would not interfere with the justice of the peace's assignment of duties. The Review Council emphasized that the assignment of judicial duties should be the first priority and if a justice of the peace seeks to engage in extra-remunerative work, he or she should arrange the times for that activity in a manner that does not require special accommodation in judicial scheduling.

The Review Council approved of the application contingent upon the following conditions:

1) The Council's approval of the request must present no difficulties in fulfilling judicial assignments during the period of teaching.

2) Her Worship's availability to instruct must not affect her availability to fulfill her primary responsibilities as a justice of the peace during assigned hours. She must request that the final examination be scheduled on an evening or weekend when she would not otherwise be assigned to judicial duties; if that could not be arranged, she must use vacation time or compensating time off. Her office hours and availability for student consultation must not interfere with the regular court day and should be scheduled in the evening after her approved teaching times or at times when she was not otherwise assigned to judicial duties and where she had requested either

vacation or compensating time off. Similarly, her Program Evaluation should be done at a time when she had requested either vacation or compensating time off. If it became necessary to make up any class time, it had to be done so as to not interfere with the regular court day and so that it would not require accommodation in judicial scheduling. The Council is of the view that non-presiding days should not be used for such purposes.

3) Her Worship must maintain appropriate distance from her role and responsibilities as a judicial officer in the completion of the teaching of this course.

4) Her Worship may accept remuneration for the teaching, but such remuneration must be the same as that paid to other instructors without regard to the position as a justice of the peace.

5) Her Worship must not use the Court's email network, computer or other resources for any purpose related to the teaching activities, as those resources are provided for purposes associated with her official responsibilities.

6) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

CASE NO. ER-26-002/15

The Review Council approved of an application to engage in extra-remunerative work teaching two courses at the Business School of a college. The approval was granted after the Council confirmed that the Regional Senior Justice of the Peace had no concerns about potential impacts related to scheduling and His Worship's assignment of duties. While this request to teach during the day was approved by the Review Council, the Council emphasized its view and preference of the Review Council that educational teachings by justices of the peace should be engaged in during the evenings rather than during weekdays, so as not to present any potential impact on judicial responsibilities or pose issues relating to fulfilling scheduling obligations at a base court location. The Review Council noted that His Worship confirmed that he would be using vacation to teach the courses, and that he had sufficient vacation days available to do so. His Worship assured the Review Council that his teaching activities would not affect his ability to fulfill his duties as a justice of the peace.

Policy on Extra-Remunerative Work and Applications Considered

The approval was subject to the following conditions:

1) The Review Council's approval of the request must present no difficulties in fulfilling judicial assignments during the period of teaching.

2) His Worship's availability to instruct must not impact upon his availability to fulfill his primary responsibilities as a justice of the peace during assigned hours. As such, his availability to instruct must be undertaken at times when he is not otherwise assigned to judicial duties and where he had requested either vacation or compensating time off. The Review Council was of the view that non-presiding days should not be used for such purposes.

3) His Worship must maintain appropriate distance in the completion of the teaching of this course from his role and responsibilities as a judicial officer.

4) He may accept remuneration for the teaching, but such remuneration must be the same as that paid to other instructors without regard to his position as a justice of the peace.

5) His Worship must refrain from using the Court's email network, computer or other resources for any purpose related to the teaching activities, as those resources are provided for purposes associated with his official responsibilities.

6) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

APPENDIX C

PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

APPENDIX C

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

"Respect for the Judiciary is acquired through the pursuit of excellence in administering justice."

PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

C

PREAMBLE

A strong and independent judiciary is indispensable to the proper administration of justice in our society. Justices of the peace must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government. In turn, society has a right to expect those appointed as justices of the peace to be honourable and worthy of its trust and confidence.

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The following principles of judicial office are established by the justices of the peace of the Ontario Court of Justice and set out standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives.

APPENDIX C

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

1. THE JUSTICE OF THE PEACE IN COURT

1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

Commentaries:

Justices of the peace should not be influenced by partisan interests, public pressure or fear of criticism.

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

1.2 Justices of the peace have a duty to follow the law.

Commentaries:

Justices of the peace have a duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law.

1.3 Justices of the peace will endeavour to maintain order and decorum in court.

Commentaries:

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

2. THE JUSTICE OF THE PEACE AND THE COURT

2.1 Justices of the peace should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.

2.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

2.3 Reasons for judgment should be delivered in a timely manner.

2.4 Justices of the peace have a duty to maintain their professional competence in the law.

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

Commentaries:

Justices of the peace should attend and participate in continuing legal and general education programs.

2.5 The primary responsibility of justices of the peace is the discharge of their judicial duties.

Commentaries:

Subject to applicable legislation, justices of the peace may participate in law related activities such as teaching, participating in educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities to do not interfere with their primary duty to the court.

3. THE JUSTICE OF THE PEACE IN THE COMMUNITY

3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

Commentaries:

Justices of the peace must not participate in any partisan political activity. Justices of the peace must not contribute financially to any political party.

3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.

3.4 Justices of the peace are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

Commentaries:

Justices of the peace should not lend the prestige of their office to fund-raising activities.

APPENDIX D

HEARING RE JUSTICE OF THE PEACE SANTINO SPADAFORA

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, C. J.4, AS AMENDED

Concerning a Complaint about the Conduct of Justice of the Peace Santino Spadafora

Before: The Honourable Justice Esther Rosenberg
Regional Senior Justice of the Peace Bernard Swords
Ms. Leonore Foster, Community Member

Hearing Panel of the Justices of the Peace Review Council

DECISION ON THE MOTION TO SCHEDULE HEARING DATES

Counsel:

Mr. Scott K. Fenton
Fenton, Smith

Presenting Counsel

Mr. Mark J. Sandler
Cooper, Sandler, Shime & Bergman LLP

Counsel for His Worship Santino Spadafora

Public Hearing Re
His Worship Santino Spadafora

DECISION ON THE MOTION TO SCHEDULE HEARING DATES

1. This hearing is being held pursuant to section 11.1 of the *Justices of the Peace Act* in relation to a complaint about the conduct of His Worship Santino Spadafora.

2. The allegations about His Worship's conduct are summarized below:

   > Between 2005 and 2011, His Worship submitted expense claims in which he misrepresented information and claimed for overnight stays and driving distances that were incorrect, excessive and/or inappropriate. When made aware of issues, he provided information to the Manager of Regional Judicial Support that misrepresented his travel dates, places of stay and distances of travel.

3. Previously, this Panel had scheduled dates in November of 2014 to hear the evidence in this hearing. His Worship Spadafora filed a motion to adjourn the matter and the Hearing Panel convened on November 14, 2014 to hear the motion.

4. At that time, Mr. Sandler, Counsel for His Worship, withdrew the request to adjourn and informed the Panel that His Worship had indicated to Chief Justice Annemarie E. Bonkalo on November 13, 2014 that he was retiring from judicial office, effective January 31, 2015. Based on that, this Hearing Panel decided on November 14, 2014 that it would not be a good use of public funds to proceed with the hearing dates that were scheduled to commence the week of November 24, 2014, and it adjourned the hearing *sine die*.

5. Subsequently, His Worship requested permission of the Chief Justice on December 18, 2014, to withdraw his letter of retirement. The Chief Justice granted his request on January 6, 2015.

6. Presenting Counsel promptly filed a Notice of Motion to reinstate the proceedings. This Panel determined on November 14, 2014 that if His Worship Spadafora were to ever attempt to return to office as a justice of the peace, the Review Council would regain jurisdiction and the hearing process would reactivate and continue. Pursuant to that, this Hearing Panel has convened today.

7. We have heard submissions today from Presenting Counsel Mr. Smith, on behalf of Mr. Fenton, and from Mr. Shime, on behalf of Mr. Sandler, Counsel for His Worship Spadafora. Mr. Smith filed a sworn "Acknowledgment", dated January 22, 2015, from His Worship Spadafora indicating his intention to "irrevocably" retire from judicial office, effective January 31, 2015.

8. Mr. Smith and Mr. Shime also made recommendations on how to proceed at this time. They suggested three possible approaches: adjourning the hearing *sine die* with no fixed date; reconvening the Panel shortly after January 31, 2015 to schedule dates to hear evidence; or, setting dates at this time.

9. We are extremely concerned about the course of events. We accept that His Worship has filed a sworn document today indicating for a second time his intention to retire effective January 31, 2015. However, we are very mindful of our mandate to maintain public confidence in the judiciary and in the administration of justice, including this complaints process.

10. Acting prudently, and in the interest of absolute certainty in the judicial discipline process, it is our view that the Panel must ensure that there is no risk of further delays in this hearing process if it becomes necessary to proceed. Therefore, it is imperative to have all steps in place for the hearing of evidence, should His Worship again request revocation of his retirement.

11. The Panel is also sensitive to the expenditure of public funds and concludes that the most expeditious and least costly option moving forward is to set dates at this time. Should His Worship's retirement take effect on January 31, 2015, this Panel would lose jurisdiction and the dates would be vacated.

Dated this 23rd day of January, 2015.

HEARING PANEL:

The Honourable Justice Esther Rosenberg, Chair

Regional Senior Justice of the Peace Bernard Swords

Ms. Leonore Foster, Community Member

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, C. J.4, AS AMENDED

Concerning a Complaint about the Conduct of Justice of the Peace Santino Spadafora

Before: The Honourable Justice Esther Rosenberg
Regional Senior Justice of the Peace Bernard Swords
Ms. Leonore Foster, Community Member

Hearing Panel of the Justices of the Peace Review Council

D

DECISION ON THE REQUEST FOR A RECOMMENDATION FOR COMPENSATION OF LEGAL COSTS

Counsel:

Mr. Scott K. Fenton Fenton, Smith	Mr. Mark J. Sandler Cooper, Sandler, Shime & Bergman LLP
Presenting Counsel	Counsel for His Worship Santino Spadafora

Public Hearing Re
His Worship Santino Spadafora

DECISION ON THE REQUEST FOR A RECOMMENDATION FOR COMPENSATION OF LEGAL COSTS

Background

1. This is a hearing, pursuant to section 11.1 of the *Justices of the Peace Act* into a complaint about the conduct of Justice of the Peace Santino Spadafora of the Ontario Court of Justice. The decision to order a hearing was taken following the investigation of the complaint in accordance with the Review Council's complaints process. A three-person complaints committee, consisting of a judge, a justice of the peace, and a community or lawyer member, investigated the complaint and ordered, pursuant to section 11(15)(c) of the *Act* that a formal hearing be held.

2. Pursuant to section 11.1(1) of the *Act,* the Honourable Chief Justice Annemarie E. Bonkalo, Chair of the Review Council, established this Hearing Panel to hear evidence and determine whether there is evidence to support a finding of judicial misconduct and, if so, to determine the appropriate disposition of the complaint under section 11.1(10).

3. On January 24, 2014, Presenting Counsel, Mr. Scott Fenton, filed the Notice of Hearing setting out the allegations about His Worship's conduct which are summarized below:

   > Between 2005 and 2011, His Worship submitted expense claims in which he misrepresented information and claimed for overnight stays and driving distances that were incorrect, excessive and/or inappropriate. When made aware of issues, he provided information to the Manager of Regional Judicial Support that misrepresented his travel dates, places of stay and distances of travel.

4. Five dates were scheduled for evidence, commencing on November 24, 2014.

5. On November 4, 2014, His Worship filed a motion for adjournment of the hearing.

6. On November 13, 2014, His Worship submitted a letter to Chief Justice Bonkalo, confirming his full retirement, effective January 31, 2015. He withdrew his motion for an adjournment.

7. The Hearing Panel convened on November 14, 2014 at which time Mr. Sandler confirmed that His Worship had submitted his letter of retirement. The Panel noted that in the circumstances, it was not a good use of public funds to proceed with the hearing. A minimum of five full days were scheduled for the hearing of evidence. The Panel would then need time to deliberate and issue a decision. The Panel determined that it was unlikely that the hearing process would be fully concluded before the retirement would take effect. It considered that on January 31, 2015 when the retirement was to take effect, the Review Council and this Hearing Panel would lose jurisdiction over the matter. On that basis, pending the retirement taking effect, the Hearing Panel adjourned the matter *sine die*.

8. The Panel also noted that if His Worship were to ever attempt to return to office as a justice of the peace, the Review Council would regain jurisdiction and the hearing process would reactivate and continue.

9. On November 14, 2014, Mr. Sandler submitted a request on behalf of His Worship Spadafora pursuant to section 11.1 of the *Justices of the Peace Act* for a recommendation to the Attorney General that he should be compensated for the costs of legal services incurred in connection with the hearing. Section 11.1 states:

> Compensation
> 11.1(17) The panel may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the hearing.
>
> Maximum.
> (18) The amount of compensation recommended under subsection (17) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

10. Shortly after that date, His Worship Spadafora wrote to Chief Justice Bonkalo and requested permission to withdraw his letter of retirement. In a letter, dated January 6, 2015, Chief Justice Bonkalo exercised her discretion in favour of that request and allowed the retirement letter to be withdrawn.

11. With the withdrawal of the retirement, the Hearing Panel would retain jurisdiction to proceed with the hearing. Presenting Counsel promptly filed a motion to reinstate the proceedings as soon as reasonably possible. The motion was scheduled to be heard on January 23, 2015.

12. The Hearing Panel convened on January 23, 2015. At that time, Presenting Counsel advised that His Worship Spadafora sent an email to Chief Justice Bonkalo on January 14, 2015 again indicating his intention to retire, effective January 31, 2015.

13. On January 23, 2015, His Worship filed a sworn document indicating his intention to retire irrevocably, effective January 31, 2015.

14. On January 23, 2015, the Panel expressed its concern about the course of events. Acting prudently, and in the interest of absolute certainty in the judicial discipline process, it put steps in place for the hearing of evidence, should His Worship again request revocation of his retirement. The Panel was sensitive to the expenditure of public funds and concluded that the most expeditious and least costly option moving forward was to set potential hearing dates, with the understanding that should His Worship's retirement take effect on January 31, 2015, this Panel would lose jurisdiction and the dates would be vacated. The hearing was scheduled to commence on March 30, 2015.

15. The retirement took effect on January 31, 2015 and the Panel lost jurisdiction over the hearing and the dates were vacated.

16. Following the further appearance on January 23, 2015, His Worship submitted a supplementary request through Mr. Sandler for compensation for legal costs related to that appearance.

17. In considering His Worship's requests for a recommendation for compensation of his legal costs associated with the hearing process, the Panel considered the guidelines set out in the JPRC hearing in 2013 about the conduct of His Worship Tom Foulds. In that case, the presiding Hearing Panel observed that the provision in section 11.1(17) relating to a request for compensation of legal costs is unusual in the professional disciplinary process. That Panel noted that the awarding of costs in judicial misconduct proceedings has lacked consistency and it endeavoured to provide some general guidelines to consider in deciding upon such requests.

18. Although a number of the guidelines in the *Foulds* case applied to the situation where after a hearing there was a finding of judicial misconduct, some of the guidelines are relevant where a matter has not proceeded to a hearing and there is no finding of misconduct:

    (i) Respondents to these hearings should be encouraged to retain counsel.

    (ii) Where counsel assists with the preparation of an Agreed Statement of Facts, it is recognized that this results in a considerable savings to the public.

    (iii) Having complainants and other witnesses cross-examined by counsel, rather than by the judicial officer who is the subject of the complaint proceedings, adds to procedural fairness and the dignity of the process. It also avoids the unseemliness of a judicial officer directly pleading his case to his judicial peers.

19. The Panel agrees with the view expressed by that Panel that these guidelines serve the public interest by ensuring that its judicial officers are fairly and adequately represented, but not at the cost of the administration of justice as a whole. A Hearing Panel of the JPRC must be mindful of the role of the complaints process in preserving and restoring public confidence in the judiciary, and of the fact that the public expects careful scrutiny when a request is made for public funds to pay the costs of a judicial disciplinary hearing.

20. Keeping in mind the public interest, in addition to the factors listed above in paragraph 18, the Panel is of the view that the following additional guidelines should be applied in circumstances where a hearing under section 11.1 of the *Act* has been ordered even if the complaints process did not proceed to the stage where a decision was made, based on the merits, as to whether the justice of the peace's actions constituted judicial misconduct:

    (a) The outcome of the proceedings;

    (b) The nature of the allegations before the Hearing Panel;

    (c) The complexity of the proceeding and the importance of the issues;

(d) The amount requested;

(e) Whether the conduct of the justice of the peace tended to shorten or to lengthen unnecessarily the duration of the process or unnecessarily increased the cost of the process;

(f) Whether the conduct of the justice of the peace during the process could negatively impact on public confidence in the judiciary and in the complaints process that has been established to preserve that confidence;

(g) The skill and competence of counsel;

(h) Time and costs saved prior to reaching a conclusion in the process;

(i) The amount of costs that an unsuccessful party could reasonably expect to pay in relation to the steps in the proceeding for which costs are being requested; and,

(j) Whether the legal services relate to matters that were peripheral to or outside of the consideration of the matters before the Panel.

21. In considering the outcome in this process, we note that the allegations were serious. This is not a case where the allegations of misconduct have been dismissed. His Worship Spadafora retired before the evidence was called. The Hearing Panel lost jurisdiction to proceed.

22. It is also not a situation where the allegations were proven or disproven in the hearing. In his oral submissions, Mr. Sandler referred to a related criminal charge which was withdrawn by the prosecution and he informed the Panel that His Worship had to incur expenses personally to successfully defend the criminal charge. There was no finding made by a court in that regard that informs our decision. We are also mindful that in the Canadian system of justice, it would not be appropriate to assume that there would have been a finding of judicial misconduct.

23. We accept Mr. Sandler's submissions that he worked closely with Presenting Counsel to narrow the issues that would be the subject of the hearing and to obviate the need to formally prove uncontentious matters. It is our understanding that through those discussions and a pre-hearing conference, the number of days

estimated for the hearing was reduced from several weeks to five days. We accept that he was also actively involved in the discussions with his client that led to his decision to retire, which ultimately saved considerable costs associated with a contested hearing. We also note that work was done on an Agreed Statement of Facts. Mr. Fenton submitted that Mr. Sandler was reasonable to deal with in coming to concessions regarding the admissibility of documents and expressed his agreement that the matter was complex and that Mr. Sandler assisted in that regard. We are recommending compensation for those legal services.

24. We are not recommending compensation for services provided on March 25, 2014, April 11, 2014 or April 19, 2014 which we find relate to the application by the Association of Justices of the Peace of Ontario ("AJPO") for intervenor status in the hearing. We note that His Worship did not file written submissions and had no significant oral submissions in that application. We are of the view that reasonable informed members of the public would see those services as unnecessary for His Worship and could perceive those services as being provided to assist AJPO, rather than His Worship Spadafora. We are recommending compensation for the costs charged by Mr. Sandler for his attendance and that of Ms. Shwartzentruber on August 22, 2014 when the application for intervenor status was argued and denied.

25. On November 13, 2014, His Worship submitted his first letter to the Chief Justice of the Ontario Court of Justice confirming his retirement from judicial office, effective January 31, 2015. It was a motion brought by His Worship on short notice and less than two weeks before the hearing was scheduled to commence on November 24, 2014. The hearing dates had been determined months earlier on May 2, 2014. As a result of the Notice of Motion, hearing facilities were required for the hearing of the motion, along with the attendance of the Panel members, Presenting Counsel, staff and a reporter. Notice had to be given to the public. On November 14, 2015, Mr. Sandler requested that the motion be withdrawn.

26. We are not recommending compensation for most of the costs of legal services after October 27, 2014 related to the motion that was withdrawn on November 14, 2014. It is our view that, in all of the circumstances, public confidence in the complaints process would not be served by granting compensation for those costs. We have granted the cost of Mr. Sandler's appearance on November 14, 2014 because he

formally confirmed to the Panel and for the public that His Worship had submitted a letter of retirement, effective January 31, 2015. Mr. Sandler also made oral submissions on the question of whether the Panel should make a recommendation that His Worship should be compensated for his legal costs.

27. Nor are we prepared to recommend compensation for any legal services incurred subsequent to the date when His Worship submitted his first letter of retirement to the Chief Justice. The submission of a letter of retirement is a significant step, particularly when it is done in circumstances when the justice of the peace is the subject of a judicial disciplinary hearing. For public confidence to be preserved in the judiciary, the public is entitled to expect the letter of retirement to be irrevocable. In this case, His Worship submitted a letter of retirement in November that impacted on the hearing process and he then withdrew that letter. Presenting Counsel had to bring a motion to reschedule hearing dates. The hearing process is public and the public had to be apprised that the hearing was cancelled and then that it would need to be rescheduled.

28. The withdrawal of the letter of retirement created a risk that members of the public could perceive His Worship to be attempting to manipulate the hearing process. As indicated, the purpose of the complaints process is preserving and restoring confidence in the judiciary. The Panel has concluded that it would be inconsistent with that purpose for the public to bear the cost of legal expenses incurred after His Worship submitted the first letter of retirement, dated November 13, 2014.

29. We have also been mindful of section 11.1(17) which respects the fact that a request is being made to use public funds and that section 11.1(18) requires that compensation be based upon the rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

30. For all of those reasons, we are recommending to the Attorney General that His Worship Spadafora be compensated in the amount of $13,888.50 plus HST for part of the cost of the legal services provided by Mr. Sandler in relation to the hearing ordered into the complaint alleging judicial misconduct.

Dated: April 7, 2015.

APPENDIX D

Public Hearing Re
His Worship Santino Spadafora

HEARING PANEL:

The Honourable Justice Esther Rosenberg, Chair

Senior Advisory Justice of the Peace Bernard Swords

Ms. Leonore Foster, Community Member

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APPENDIX E

HEARING RE JUSTICE OF THE PEACE ROBERT WHITTAKER

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, C. J.4, AS AMENDED

Concerning Six Complaints about the Conduct of Justice of the Peace Robert E. Whittaker

Before: The Honourable Justice Ralph Carr
Justice of the Peace Kathleen Bryant
Dr. Michael Phillips, Community Member

Hearing Panel of the Justices of the Peace Review Council

DECISION ON THE REQUEST FOR A RECOMMENDATION FOR COMPENSATION OF LEGAL COSTS

Counsel:

Ms. Marie Henein and Ms. Christine Mainville Henein Hutchison LLP	Mr. Brian Irvine Barrister & Solicitor
Presenting Counsel	Counsel for His Worship Robert E. Whittaker

Public Hearing Re
His Worship Robert Whittaker

DECISION ON THE REQUEST FOR A RECOMMENDATION FOR COMPENSATION OF LEGAL COSTS

Background

1. A hearing was ordered, pursuant to section 11.1 of the *Justices of the Peace Act* (the *"Act"*) into six complaints concerning the conduct of Justice of the Peace Robert Whittaker of the Ontario Court of Justice. The decision to order a hearing was taken following the investigation of the complaints in accordance with the Procedures of the Justices of the Peace Review Council (JPRC). A three-person complaints committee, consisting of a judge, a justice of the peace, and a community or lawyer member, investigated the complaints and ordered, pursuant to section 11(15)(c) of the *Act* that a formal hearing be held into all of the complaints and that they be heard together.

2. Pursuant to section 11.1(1) of the *Act*, then Chief Justice Annemarie E. Bonkalo, Chair of the Review Council, established this Hearing Panel to preside over the matter.

3. On December 16, 2014, Presenting Counsel, Ms. Marie Henein, filed the Notice of Hearing setting out the allegations about His Worship Whittaker's conduct which are summarized below:

> His Worship demonstrated a pattern of conduct that gave rise to a perception of bias and partiality; abused his judicial power by acting in a punitive and arbitrary manner to punish people in a manner inconsistent with the law; and acted in a manner unbecoming of a justice of the peace, causing a loss of confidence in his ability to act impartially and with integrity.

4. Counsel for His Worship, Mr. Brian Irvine, estimated that four days were required for the hearing. Presenting Counsel estimated that two days would be required. Three dates were scheduled for evidence, commencing on March 25, 2015. A pre-hearing conference was also ordered. The pre-hearing conference took place on January 21, 2015.

5. On January 28, 2015, His Worship submitted a letter to the Associate Chief Justice Coordinator of Justices of the Peace confirming his retirement from the office of Justice of the Peace, effective March 15, 2015. In the letter, he stated that he would not be revoking the letter of retirement.

6. The public interest in finality and certainty in the complaints process required the hearing date to be maintained until the retirement took effect. The retirement came into effect on March 15, 2015, less than two weeks before the dates scheduled for evidence to be presented to the Hearing Panel. On March 15th, with the termination of judicial office, the Panel lost jurisdiction to impose a disposition under section 11.1 of the *Act*. After the retirement took effect, the dates that had been scheduled for the hearing were vacated.

7. Mr. Whittaker has submitted a request pursuant to section 11.1 of the *Act* for a recommendation to the Attorney General that he should be compensated for the costs of legal services incurred in connection with the hearing. Those section state:

> Compensation
> 11.1(17) The panel may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the hearing.
>
> Maximum
> (18) The amount of compensation recommended under subsection (17) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

8. Mr. Whittaker has requested that he be compensated in the amount of $5,737.50 for legal fees incurred for the hearing process, plus HST, for a total amount of $6,482.87. He submitted in a letter, dated May 29, 2015 that the amount is fair and just. The legal services were set out in the account filed on July 16, 2015.

9. Presenting Counsel filed written submissions on August 5, 2015. In the submissions, they raised the question as to whether a Hearing Panel loses jurisdiction to consider a request for a recommendation for compensation of legal costs after a justice of the peace has retired from office. In their submissions, Presenting Counsel provided us with arguments of statutory interpretation that support the logical conclusion that a Panel has jurisdiction to recommend compensation even where the subject justice of the peace has retired. The costs were incurred while the justice of the peace was in office and it is our view that we have jurisdiction to consider the request and to make a recommendation under sections 11.1 (17) and (18).

10. The Panel considered the guidelines set out in the JPRC hearing in 2013 about the conduct of His Worship Tom Foulds. The Panel also considered the guidelines set out by the Hearing Panel that presided over the JPRC hearing about the conduct of former Justice of the Peace Santino Spadafora in 2014 and 2015 that apply in circumstances where a hearing has been ordered but the justice of the peace has retired before a decision was made, based on the merits, as to whether a justice of the peace's actions constituted judicial misconduct.

11. We agree the following principles that were recognized by the Hearing Panel in *Re Foulds* (JPRC, 2013) and followed in *Re Spadafora* (JPRC, 2015):

    (i) Respondents to these hearings should be encouraged to retain counsel.

    (ii) Having complainants and other witnesses cross-examined by counsel, rather than by the judicial officer who is the subject of the complaint proceedings, adds to procedural fairness and the dignity of the process. It also avoids the unseemliness of a judicial officer directly pleading his case to his judicial peers.

    (iii) Judicial officers should be fairly and adequately represented, but not at the cost of the administration of justice as a whole. A Hearing Panel of the JPRC must be mindful of the role of the complaints process in preserving and restoring public confidence in the judiciary, and of the fact that the public expects careful scrutiny when a request is made for public funds to pay the costs of a judicial disciplinary hearing.

12. In this case, the allegations were serious. There were six complaints. The Notice of Hearing, filed as Exhibit One, contains allegations that His Worship acted in a biased and partial manner that gave rise to a perception of bias and partiality; that he abused his power as a justice of the peace by acting in a punitive and arbitrary manner; that he acted in a manner inconsistent with the framework of the law and contrary to the interests of justice and the rights of the parties before the court; and, that he acted in a manner that was unbecoming of a justice of the peace. It is possible that following a hearing there would have been a finding of judicial

misconduct and there may have been no recommendation for compensation. On the other hand, the process did not proceed to the stage where evidence was called and there was no determination on the merits.

13. We have concluded that a reasonable person properly informed would understand the principles that justices of the peace should be fairly and adequately represented at judicial disciplinary hearings and that having complainants and other witnesses cross-examined by counsel, rather than by the judicial officer who is the subject of the complaint proceedings, adds to procedural fairness and the dignity of the process.

14. Counsel is a senior and experienced lawyer. The time indicated for most of the legal services that have been itemized is modest. The exception is a general item indicating that 23 letters and/or emails were sent or received. That item is not well particularized, no dates are indicated in support of that aspect of the account and the number of pieces of correspondence appears to us to be excessive.

15. The most serious outcome that can occur after a full hearing is a removal under section 11.2 of the *Act* of the justice of the peace from office. The result of the retirement was the same: Mr. Whittaker is no longer a justice of the peace. We agree with Presenting Counsel's submission that there should be some recognition of the costs saved by his retirement. Members of the public would recognize that the retirement prior to the hearing of evidence resulted in the avoidance of costs. There would have been two or three days of evidence, additional time and expense for our deliberations, and if there were findings of misconduct, further dates to hear submissions on disposition and impose the appropriate disposition(s).

16. However, as Presenting Counsel submitted, His Worship chose a retirement date that was post-dated to a time less than two weeks before the hearing date; members of the public could perceive that step as an attempt to manipulate the hearing process. We are mindful of the concern raised by Presenting Counsel that the compensation regime should not be applied in such a way that it can be perceived as encouraging judicial officers to retire at the latest opportunity – and thereby continue to receive a salary, benefits and accumulate a pension as long as possible – while ultimately avoiding a public hearing where evidence can be presented about the allegations and a determination would be made as to whether

there was judicial misconduct. Recommendations for compensation should take into account whether the retirement is made at the earliest opportunity, or at least in a timely manner that would not contribute to a loss of public confidence.

17. Because of the delayed retirement date of March 15, 2015, uncertainty remained and finality was not yet achieved until that date. The Hearing Panel and Presenting Counsel had to continue to be available for the hearing, given that the retirement had not fully taken effect.

18. The Panel has concluded that the public should not bear the cost of legal expenses incurred after December 16, 2015. In our view, His Worship could have retired and left office at an earlier opportunity and avoided unnecessary expenditures of public funds. By December 16th, he had received the Notice of Hearing and had full disclosure of the evidence that would be called if the hearing proceeded. The account shows that his lawyer had carried out legal research and spoken with him a number of times about the matter prior to that date.

19. For all of those reasons, we are recommending to the Attorney General that Mr. Whittaker be compensated in the amount of $4,668.75 for legal fees incurred up to and including December 16, 2014, plus HST, for part of the cost of the legal services provided by Mr. Irvine in relation to the hearing ordered into the complaints alleging judicial misconduct. We are not recommending compensation for legal services incurred after that date or for 2.3 hours claimed for 23 pieces of correspondence. Our recommendation is intended to balance the principles set out above while being mindful of the role of the complaints process in preserving and restoring public confidence in the judiciary.

Dated: September 8, 2015.

HEARING PANEL:

The Honourable Justice Ralph Carr, Chair

Justice of the Peace Kathleen Bryant

Dr. Michael Phillips, Community Member

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APPENDIX F

HEARING RE JUSTICE OF THE PEACE ERROL MASSIAH

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, C. J.4, AS AMENDED

Concerning a Complaint about the Conduct of Justice of the Peace Errol Massiah

Before: The Honourable Justice Deborah K. Livingstone, Chair
Justice of the Peace Michael Cuthbertson
Ms. Leonore Foster, Community Member

Hearing Panel of the Justices of the Peace Review Council

DECISION ON DISPOSITION

Counsel:

Ms. Marie Henein
Mr. Matthew Gourlay
Henein Hutchison LLP

Presenting Counsel

Mr. Ernest J. Guiste
E. J. Guiste Professional Corporation
Mr. Jeffry A. House
Counsel for His Worship Errol Massiah

Mr. James Morton
Morton Karrass LLP
Counsel for the Association of Justices of the Peace of Ontario (Intervenor)

Public Hearing Re His Worship Errol Massiah

PUBLICATION BAN:

On June 11, 2014, this Panel made an order that the names of all witnesses who appear in any of the *facta* or motion materials or application records in this hearing shall not be published, nor shall any information that might identify them be published. Names of witnesses have been redacted.

DECISION ON DISPOSITION

1. In our decision, dated January 12, 2015, pursuant to section 11.1(10) of the *Justices of the Peace Act,* R.S.O. 1990, c.J. 4, as amended (hereafter "the *Act*"), this Hearing Panel found that the evidence was sufficiently clear, convincing and cogent to establish on a balance of probabilities that Justice of the Peace Errol Massiah had engaged in judicial misconduct. We found that the following 13 allegations referred to in the Notice of Hearing, filed as Exhibit 1(b), were proven by the evidence presented before us:

    1) Between May 30, 2007 and August 23, 2010, he engaged in a course of conduct, including comments and/or conduct, towards female court staff, prosecutors and defendants that was known, or ought reasonably to have been known, to him to be unwelcome or unwanted. The conduct resulted in a poisoned work environment that was not free of harassment.

    2) He acted in a manner inconsistent with the *Human Rights Code* by failing to treat others in the justice system with mutual respect and dignity.

    3) He displayed improper and/or offensive conduct and made inappropriate, sexual and/or offensive comments directed at females that made persons working in the justice system feel uncomfortable, uneasy or embarrassed.

    4) His Worship ought to have known that such behaviour, particularly given his position as a judicial officer, could cause offence, harm, discomfort and/or undermine the dignity of female staff and prosecutors.

5) The behaviour occurred in the workplace at the courthouse or at a location or event related to the workplace.

6) His Worship's inappropriate and/or offensive conduct contributed to a poisoned work environment such that the comments and/or behaviour created a hostile or offensive work environment for individuals or groups and diminished individuals' confidence in him as a judicial officer and their confidence in the administration of justice.

7) His interaction with female staff was inappropriate and included sexual, suggestive and/or inappropriate comments and/or conduct. His conduct included gender-related comments about an individual's physical characteristics or mannerisms; and/or unwelcome physical contact; and/or suggestive or offensive remarks or innuendoes about the female gender; and/or leering or inappropriate staring, including:

   (a) Leering at and/or ogling at female court staff.

   (b) When he was introduced to "AA" in 2007, he slowly looked her up and down causing her to feel uncomfortable and giving rise to a perception of an "undressing" look.

   (c) He said to "BB", "Looking good today, 'BB'" while looking her up and down head to toe with his eyes, and he often looked her up and down head to toe.

   (e) He said to "BB" in the back hallway near the women's washroom that he liked two-tone blondes.

8) He invited court staff into his chambers when he was not fully dressed, including:

   (a) On two occasions between 2007 and August of 2010, he was in his chambers changing his clothes with the door open when "EE" came to his chambers to bring him paperwork. He told her to enter the

chambers in circumstances when he was not fully dressed. In one instance he was about to put his shirt on and in one instance his shirt was wide open. He was either putting his shirt on or taking it off. He told her, "That's okay", "no, no, don't worry, just stay" and said, "come on in".

(c) On another occasion, he was in his chambers changing his clothes with the door open. When "FF" was delivering documents to him, he was standing in partial view of the door with his shirt off.

(d) In the hallway behind the courtroom, he inappropriately removed his robe when he was wearing an undershirt but no dress shirt, in the presence of a female court staff person, "GG".

9) In late spring or early summer of 2010, "HH", a provincial prosecutor, was coming in from the parking garage to the courthouse. As she was walking past His Worship who was sitting outside he said, "Ms. "HH", looking goooood" in a manner that conveyed sexual undertones. With his eyes he also looked her up and down in a manner that conveyed sexual connotations. This caused Ms. "HH" to feel very uncomfortable and vulnerable.

10) Between 2007 and 2008, when "HH", the provincial prosecutor previously referred to, was walking up the stairs in the courthouse, he leaned in toward her from behind and with his mouth close to her ear, he said, "Oooh, lady in red" in a manner that appeared to be deliberately flirtatious, intimate and/or suggestive in an inappropriate way for a female in the workplace.

11) He approached "BB" from behind when she was seated at her desk, stood inappropriately close to her, hovered over her, touched her shoulders and in a sensual, sexual way said, "How are you doing today?" causing Ms. "BB" to feel very uncomfortable and shaken.

12) He demonstrated inappropriate conduct towards female defendants in the courtroom. This included leering at the female defendants looking them up and down in a sexual manner when they were standing in the courtroom, or walking up to or away from the front of the court, and giving them "the once over". Some prosecutors and some court staff felt that their confidence in him as a judicial officer and that public confidence in the administration of justice were negatively impacted by their observations of this conduct.

13) In light of the nature of the conduct set out above, the range of women who were recipients of his conduct, and his history of judicial misconduct of a similar nature at a different courthouse, his conduct demonstrated a pattern of inappropriate conduct toward women in the justice system.

2. We concluded that the act or acts as set out in the above paragraphs individually and collectively constitute judicial misconduct that warrants a disposition(s) under section 11.1(10) of the *Justices of the Peace Act* to preserve the integrity of the judiciary and restore public confidence.

3. We now consider the issue of what disposition or dispositions are appropriate to restore the public's confidence in the judiciary and the administration of justice.

4. Section 11.1 (10) of the *Act* provides that:

> 11.1(10) After completing the hearing, the panel...if it upholds the complaint... may,
>
> a) warn the justice of the peace;
>
> b) reprimand the justice of the peace;
>
> c) order the justice of the peace to apologize to the complainant or to any other person;
>
> d) order that the justice of the peace take specified measures, such as receiving education or treatment as a condition of continuing to sit as a justice of the peace;

e) suspend the justice of the peace with pay, for any period;

f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days;

g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.

5. Section 11.1 (11) of the *Act* provides that the "panel may adopt any combination of the dispositions" except that a recommendation to the Attorney General that a justice of the peace be removed cannot be combined with another sanction.

6. Section 11.2(2) of the *Act* provides that a justice of the peace may be removed from office only if a complaint about the justice of the peace has been made to the Review Council and following a hearing under s. 11.1, the Hearing Panel, recommends to the Attorney General that the justice of the peace be removed on the ground that "he or she has become incapacitated or disabled from the due execution of his or her office by reason of, *inter alia*, 'conduct that is incompatible with the due execution of his or her office' or the 'failure to perform the duties of his or her office'."

7. In accordance with the Procedures of the Review Council, Presenting Counsel's role is not to seek a particular order against a justice of the peace but to see that the complaint against the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result. In that capacity, Presenting Counsel impartially assists the Hearing Panel in its consideration of the appropriate disposition(s).

8. Public confidence in the justice system is at the heart of a hearing into judicial misconduct. Like the Hearing Panel in *Re Barroilhet: Decision on Disposition* (JPRC, October 15, 2009) at para. 9, we take guidance from the principles established by the Supreme Court of Canada in *Ruffo v. Conseil de la magistrature,* [1995] 4 SCR 267 (SCC). At para. 68 in *Ruffo,* Justice Gonthier described the role of a judicial disciplinary body comparable to our Justices of the Peace Review Council established under the Quebec *Courts of Justice Act:*

> [68] The Comité's role in light of these statutory provisions was accurately described by Parent J., at p. 2214:

Public Hearing Re His Worship Errol Massiah

> [Translation] ... the Comité is the body established for a purpose relating to the welfare of the public, namely to ensure compliance with the code of ethics that sets out the rules of conduct for and duties of judges toward the public, the parties to a case and counsel. The Comité's role is to inquire into a complaint alleging that a judge has failed to comply with the code, determine whether the complaint is justified and, if so, recommend the appropriate sanction to the Conseil.
>
> The Comité's mandate is thus to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. Its role is remedial and relates to the judiciary rather than the judge affected by a sanction. In this light, as far as the recommendations the Comité may make with respect to sanctions are concerned, the fact that there is only a power to reprimand and the lack of any definitive power of removal become entirely comprehensible and clearly reflects the objectives underlying the Comité's establishment: not to punish a part that stands out by conduct that is deemed unacceptable but rather to preserve the integrity of the whole.
>
> *Ruffo v. Conseil de la magistrature,* [1995] 4 SCR 267 (SCC) at para. 68

9. Accordingly, in assessing the conduct of justices of the peace, the role of a Hearing Panel under section 11.1 of the *Act* is remedial and relates to the judiciary in general rather than the specific justice of the peace affected by a sanction. As such, the role of the Hearing Panel in addressing judicial misconduct is not to punish a part, i.e., the individual justice of the peace who stands out by conduct that is deemed unacceptable but, rather to preserve the integrity of the whole, i.e., the entire judiciary itself.

10. Both Presenting Counsel and Counsel for His Worship agree that we should be guided by the ethical expectations that are inherent in the judicial function and are well established in Canadian jurisprudence. In *Re Therrien,* [2001] 2 SCR 3, at paras. 108-111, Justice Gonthier clarifies these duties in his comments on the role of the judge and the manner in which the public perceives that role:

[108] The judicial function is absolutely unique. Our society assigns important powers and responsibilities to the members of its judiciary. Apart from the traditional role of an arbiter which settles disputes and adjudicates between the rights of the parties, judges are also responsible for preserving the balance of constitutional powers between the two levels of government in our federal state. Furthermore, following the enactment of the *Canadian Charter,* they have become one of the foremost defenders of individual freedoms and human rights and guardians of the values it embodies: *Beauregard, supra,* at p. 70, and *Reference re Remuneration of Judges of the Provincial Court, supra,* at para. 123. Accordingly, from the point of view of the individual who appears before them, judges are first and foremost the ones who state the law, grant the person rights or impose obligations on him or her.

[109] If we then look beyond the jurist to whom we assign responsibility for resolving conflicts between parties, judges also play a fundamental role in the eyes of the external observer of the judicial system. The judge is the pillar of our entire justice system, and of the rights and freedoms which the system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our democracy are built, but they are asked to embody them (Justice Jean Beetz, *Introduction of the first speaker at the conference marking the 10th anniversary of the Canadian Institute for the Administration of Justice,* observations collected in Melanges Jean Beetz (1995), at pp. 70-71).

[110] Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public

confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

> Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining the public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.
>
> (Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)

[111] The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens ...

11. We agree with the comments made by the Hearing Panel in *Re Phillips: Decision on Disposition* (JPRC, 2013):

> [21] Central to our analysis is the concept of judicial integrity expressed in the *Report of the Canadian Judicial Council to the Minister of Justice Concerning the Honourable Paul Cosgrove,* supra, where the Council wrote:

> Public confidence in the judiciary is essential in maintaining the rule of law and preserving the strength of our democratic institutions. All judges have both a personal and collective duty to maintain this confidence by upholding the highest standards of conduct.
>
> *Report of the Canadian Judicial Council to the Minister of Justice Concerning the Honourable Paul Cosgrove of the Superior Court of Justice of Ontario,* supra., at para. 1

12. We adopt the approach described by the Hearing Panel in *Re Baldwin* (OJC, 2002) at page 6 when determining the appropriate disposition:

> It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 51.6 (11) is to be considered. Once it is determined that a disposition under s. 51.6(11) is required, the Council should first consider the least serious – a warning – and move sequentially to the most serious – a recommendation for removal – and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally.

13. We adopt also the reasoning of Justice Otter in the *Romain Inquiry Report* that the same principles applicable in judicial misconduct cases involving judges are applicable to justices of the peace:

> Given the critically important role of the justice of the peace at the gateway to our judicial system, I am of the view that there is no reason that a justice of the peace should not be held to the same high standard of conduct as all other judicial officers.
>
> The Honourable Mr. Justice Russell J. Otter, *Report of the Judicial Inquiry Re: His Worship Rick C. Romain* (2003), at p. 21, aff'd *Romain v. Lieutenant Governor in Council* (2005), 258 DLR (4th) 567 (Ont. Div. Ct.)

14. Counsel for His Worship, in his written submissions, argued, and we accept, that security of tenure for justices of the peace, as for judges, is the first of the essential conditions of judicial independence. Removal from the bench is the most serious disposition and must only be imposed in circumstances where the judicial officer's

ability to discharge the duties of office is irreparably compromised such that he or she is incapable of executing judicial office.

15. In 2009, in relation to His Worship Jorge Barroilhet, the Hearing Panel stated:

> [26] In light of these findings, the Hearing Panel must determine whether the conduct of the justice of the peace in issue is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the justice of the peace, or of the public in its justice system, would be undermined, rendering the justice of the peace incapable of performing the duties of his or her office.
>
> *Re Barroilhet: Decision on Disposition* (JPRC, October 15, 2009)

16. In reviewing our findings of misconduct in this case, Presenting Counsel has urged us to consider the list of factors which the Hearing Panel in *Re Chisvin* (OJC, November 26, 2012 at para. 38) found to be helpful in its consideration of the appropriate disposition. We agree that these ten factors should guide us. They are:

    1) Whether the misconduct is an isolated incident or evidenced a pattern of misconduct;

    2) The nature, extent and frequency of occurrence of the acts of misconduct;

    3) Whether the misconduct occurred in or out of the courtroom;

    4) Whether the misconduct occurred in the judge's official capacity or in his private life;

    5) Whether the judge has acknowledged or recognized that the acts occurred;

    6) Whether the judge has evidenced an effort to change or modify his conduct;

7) The length of service on the bench;

8) Whether there have been prior complaints about this judge;

9) The effect the misconduct has upon the integrity of and respect for the judiciary; and;

10) The extent to which the judge exploited his position to satisfy his personal desires.

17. We found there was a **pattern of misconduct** at the Whitby courthouse by His Worship towards women in the workplace which made them feel uncomfortable, uneasy, embarrassed and offended. As we stated in our *Reasons for Decision* (JPRC, January 12, 2015), this pattern of inappropriate and offensive conduct resulted in a poisoned work environment that was not free of harassment. The comments and/or behaviour of His Worship created a hostile or offensive work environment for individuals or groups and diminished confidence in him as a judicial officer. His conduct also diminished their confidence in the administration of justice. The women who were subjected to his misconduct included females who worked as staff, prosecutors, and litigants. When considered in addition to the findings of misconduct by the previous Hearing Panel that heard evidence about his misconduct towards female court staff at a different courthouse, the breadth of the overall pattern of conduct at both courthouses is significant and stunning.

18. The **frequency and extent of** the misconduct was relentless, occurring as early as his initial introductions to staff when he first began appearing at the Whitby courthouse. We accepted the testimony of both males and females, who received or observed the inappropriate comments and conduct, that women working in the courthouse felt sexualized and uncomfortable as a result of His Worship's judicial misconduct. We were satisfied on the balance of probabilities, that between May 30, 2007 and August 23, 2010, at the Whitby courthouse, His Worship engaged in a course of conduct, which included both sexualized comments and conduct towards female court staff, a female prosecutor, and female defendants.

19. Although His Worship Massiah has been on the bench since 2007, as a result of the sequence of events, he has been unassigned to work since August of 2010. The complaint about his misconduct at a different location was ordered to a hearing

in 2010. During that hearing, new allegations came to light about his misconduct at the second location, the Whitby courthouse, eventually resulting in the second hearing over which we have presided. His **length of active service on the bench** therefore is relatively brief, 2007 to 2010. The findings of misconduct in this matter span the entire period of His Worship Massiah's active tenure on the justice of the peace bench. We further note that much of his first year would have been involved with educational training rather than presiding on his own.

20. We found that the misconduct in this case occurred both **in and out of the courtroom** with females who were cognizant of a differential power dynamic between a judicial officer and a court employee.

21. As stated, this is the second judicial discipline hearing in relation to **a second set of findings** of misconduct against His Worship Massiah. The findings establish that this is the second court location where His Worship objectified and sexually harassed women.

22. Counsel for His Worship argued that His Worship has **acknowledged or recognized** that the acts occurred in that he made no attempt to hide what he was doing, and at the time, he thought that the sexualized comments were appropriate, and he was "kind of oblivious" to his conduct.

23. Our findings, based on the evidence presented before us in this hearing, reject the argument that His Worship "fully understands now" what is and what is not inappropriate judicial conduct.

24. We refer specifically to paras. 46, 162, 167 and 169 of our *Reasons for Decision*, dated January 12, 2015:

> "His Worship's evidence before us clearly demonstrated that he still fails to appreciate or acknowledge that there is a court hierarchy and the implications that hierarchy has for those who work in the justice system who interact with him or appear before him in the courtroom." (para. 46)

> "In our view, His Worship's evidence was an attempt to minimize the obvious sexualized manner in the workplace, which he portrayed as his "management style" in the workplace." (para. 162)
>
> "His Worship Massiah's efforts to minimize and deny the seriousness of his conduct was apparent when he was giving evidence about Mr. Hunt's disclosure to him of new allegations being received." (para. 167)
>
> "When questioned about the previous finding made by that Hearing Panel, His Worship's evidence was equivocal at best. In one moment he testified that he "accepts" the prior findings, but also maintained they were "incorrect". He appeared unable or unwilling to acknowledge the distinction between appropriate and inappropriate conduct in the workplace." (para. 169)

25. The previous Hearing Panel concluded, based on the information presented at that time, the public nature of the hearing would have brought home to His Worship any misunderstandings about his position of authority in relation to the female staff. That belief was proven wrong by His Worship's testimony before us. Despite His Worship's exposure to and opportunity to learn from the findings, reasons, and disposition from the previous hearing, and despite the decision of the Divisional Court in *Massiah v. Justices of the Peace Review Council* 2014 ONSC 3415 wherein his application for judicial review of the decisions made in the first hearing was dismissed, there was no forthright, unequivocal or convincing acknowledgement by His Worship during this hearing of the inappropriateness of his acts found to demonstrate misconduct or of the impact of his actions upon the women subjected to that misconduct. Nor was there convincing evidence that he felt remorse for those impacts.

26. Even though the findings in our hearing pre-date the decisions from the previous hearing, the findings of judicial misconduct at that hearing are relevant on the issue of disposition here in that misconduct of a similar nature has now been established in two different courthouses, involving sexualized comments and conduct towards females over whom His Worship had authority. The reasons and disposition from the first hearing are relevant as we consider His Worship's testimony before us, in a second public hearing and what disposition(s) would restore the confidence in

the judiciary of a reasonable member of the public. It is our view that a reasonable informed member of the public would be concerned by His Worship's serious ongoing failure to understand or his unwillingness to respect the right of women in the workplace in a courthouse to be free of sexual harassment by a judicial officer. A reasonable person would conclude that His Worship's professional experience and the judicial training program *Workplace Harassment Prevention Workshop: Better Safe than Sorry* attended by His Worship in the Fall of 2007 would have, or should have, educated him, prior to the time when he gave evidence before us. It should have eliminated any excuse for misunderstanding the impropriety of or the victimization caused by his actions. It should have reinforced the expectation of virtually irreproachable conduct required of a justice of the peace.

27. Counsel for His Worship submitted that His Worship has made an **effort to change or modify his conduct.**

28. His Worship was ordered by the previous Hearing Panel to undergo specific education or counselling in gender sensitivity and professional boundaries as deemed appropriate by the Chief Justice. We have reviewed the report, dated June 7, 2012, contained at Tab 3 of Volume 1 of His Worship's written submissions on the Penalty Phase, which outlines the counselling in which His Worship was engaged as the Chief Justice directed. We have reviewed, also, the documents contained at Tab 7 (from the same volume as noted above) which describes a one-to-one Remedial Human Rights session in which His Worship voluntarily participated on April 3, 2012. We acknowledge that, in his testimony, His Worship expressed some regrets about his conduct, and claimed to have gained insight about his conduct.

29. Our findings were, however, that from His Worship's testimony before us, there was cogent evidence that His Worship's view of his conduct has not changed to any degree, even after it was found by the previous Hearing Panel that similar actions and comments constitute judicial misconduct. His Worship continues to describe his comments to the females at his workplace as "compliments" and as part of his "management style". He denied touching a female member of the administrative staff but then equivocated that an inadvertent touching could have occurred because of his stature and the close proximity of the desks. He "reflected" that he was "very pumped" and therefore "greeted everyone in a very uplifting manner."

30. In considering the **extent to which His Worship exploited his position to satisfy his personal desires,** we note that in our *Reasons for Decision,* we found that his evidence "was an attempt to minimize the obvious sexualized manner in the workplace" and His Worship, even when acknowledging some of the allegations of misconduct "adjusted his testimony to minimize the inappropriateness of the conduct."

31. Most significant to our deliberation upon the appropriate sanction **is the effect the misconduct has on the integrity of and respect for the judiciary.**

32. We heard, and accepted as compelling, the evidence of two experienced prosecutors who testified that His Worship's conduct lessened the entire dignity of the court and that their confidence in His Worship Massiah and in the administration of justice was negatively impacted by his conduct towards women in the courtroom.

33. Public knowledge that a judicial officer has been found to have engaged in judicial misconduct, in the form of sexual harassment of females, at two separate courthouses cannot but have an adverse effect on public confidence in and respect for not only His Worship, but also for the judiciary as a whole.

34. There have now been findings from two distinct Hearing Panels that at least 11 women have been subject to inappropriate sexual comments and conduct by His Worship. Other witnesses, found to be credible and reliable, described observing inappropriate conduct by His Worship towards others, including female court staff, a female prosecutor, and female defendants.

35. Counsel for His Worship argues that we should be guided by the previous Panel's statement that they "are confident that His Worship Massiah will not engage in this type of conduct in the future". Therefore, we should conclude that even though we have found a sustained pattern of inappropriate sexually-themed conduct over the course of three years at the Whitby courthouse, despite the finding of similar misconduct at a different courthouse, His Worship should be allowed, after a suspension, to return to the bench and to complete the follow-up counselling ordered at the first hearing. He submits that His Worship's misconduct is "learned behaviour", like "racism" and that it would be unfair to fault him for not learning as much as he would have wanted to, when he was unable to complete the follow-up program. As the misconduct found by us pre-dated, in time, the findings

of misconduct made by the first Hearing Panel, His Worship's position is that our disposition should be similar sanctions to those previously imposed.

36. We are also mindful, however, that the mandate of this Panel is "not to punish a part that stands out by conduct that is deemed unacceptable but rather to preserve the integrity of the whole." In our view, we are entitled to take into account the findings and nature of His Worship's misconduct in both courthouse locations in considering whether a specific disposition can restore confidence in this judicial officer, but also in determining what disposition is sufficient to restore public confidence in the judiciary in general and in the justice system as a whole.

37. We rely on Mr. Justice Ivan Rand's comment regarding the test for removal of a judge of the Supreme Court of Ontario:

> Would the conduct, fairly determined in the light of all circumstances, lead [fair-minded persons] to attribute such a defect of moral character that the discharge of the duties of the office hereafter would be suspect?; has it destroyed unquestioning confidence of uprightness, of moral integrity, of honesty in decision, the elements of public honour? If so, then unfitness has been demonstrated.
>
> The Honourable Mr. Justice Ivan C. Rand, *Inquiry re: The Honourable Mr. Justice Leo A. Landreville* (1966), p. 97

38. The central issue in our determination here, as all the relevant jurisprudence directs, is what is required to restore the public confidence.

39. In all of the authorities provided by both Presenting Counsel and Counsel for His Worship, there are, fortunately, very few cases in which misconduct by judicial officers has required discipline proceedings for conduct amounting to sexual harassment. The most recent and relevant is *Re Kowarsky* (JPRC, May 30, 2011). The sexually-inappropriate conduct in that case involved one comment, involving eight words, made to one court clerk, by a justice of the peace, while court was in session and they were both at work in their specific roles. The comment was an ill-conceived attempt at humour.

40. In describing the seriousness of the misconduct, the Hearing Panel there stated at paras. 35-36:

> Firstly, conduct of this nature would not be tolerated from any other participant in the court process particularly when, as here, court is in session. In order to maintain the integrity of the judiciary a presiding judicial officer must conduct himself/herself at least as well as everyone else before the Court. When, as here, actions fall below this level there is an undermining of public confidence in the administration of justice.
>
> Secondly, even though a courtroom clerk is not employed by the Court directly, as noted above, the courtroom clerk acts under the direction of the presiding justice of the peace in the courtroom. In order to maintain the integrity of the judiciary within this framework, the standard of conduct expected in this relationship could reasonably be expected to be analogous to that expected of someone in a supervisory capacity in a more typical working relationship. This conduct fell short of this expectation and as such it is an additional source of the undermining of public confidence in the administration of justice.

41. In *Re Kowarsky,* the justice of the peace admitted that his conduct constituted judicial misconduct; he acknowledged that his conduct was completely inappropriate, unwelcome and wrong and that it upset the complainant. He made a full apology to the complainant. A psychological report provided to the Hearing Panel included comments that showed the justice of the peace had reflected upon his behaviour and its impact on the complainant, that he was genuinely remorseful, and had adjusted his behaviour such that he was unlikely to make a similar mistake in the future. The Panel found that he had real concern for the harm caused to the complainant.

42. That Hearing Panel imposed a reprimand. It stated, at paras. 40-43:

> The Panel finds that actions already taken by Justice of the Peace Kowarsky make consideration of some of the possible dispositions unnecessary. These actions include having apologized to the complainant at the time and as part of the hearing process and having taken appropriate counselling from Dr. Haskell. Dr. Haskell's opinion also confirms the lack of need for further counselling. The Panel commends these actions as they assist in restoring public confidence.

Further, the panel acknowledges that Justice of the Peace Kowarsky has taken a very significant step in having his assignment adjusted to accommodate the complainant. It is a measure that may not have been achievable in any other way. It is a very positive act for the complainant. It is an act that exhibits integrity and should assist in restoring public confidence.

The Panel's decision is to reprimand Justice of the Peace Kowarsky.

43. Counsel for His Worship made the Panel aware that Justice of the Peace Massiah requested a transfer of his assignment to the Toronto Region and on July 10, 2012, his request was approved in writing. Counsel submits that, we, like the Hearing Panel in *Kowarsky*, should consider this to be a very significant step of having his assignment changed to accommodate the women at the courthouse where the first findings of misconduct occurred and we should conclude that this demonstrates a response by His Worship which "exhibits integrity and should assist in restoring public confidence".

44. We disagree. The facts in *Kowarsky* are significantly different and distinguishable. In *Kowarsky*, there was one complainant and a single comment at one specific court location, admitted to and acknowledged by His Worship Kowarsky to be misconduct. Here, there were numerous women subjected to His Worship Massiah's misconduct, including court staff, a prosecutor, and female defendants. There were numerous acts of misconduct, none of which was admitted to or unequivocally acknowledged by His Worship. The request to transfer and approval to do so came at a time before the second set of allegations had been ordered to a hearing, before there were findings that His Worship engaged in misconduct towards females at a second courthouse and before there were findings that he is unable or unwilling to acknowledge the distinction between appropriate and inappropriate conduct in the workplace. In our view, the request and approval in writing to transfer are of no relevant significance in our deliberations and do not assist in restoring public confidence in this case

45. In the 1999 judicial inquiry in relation to Justice of the Peace Leonard Blackburn, an agreed statement of fact set out that His Worship had made inappropriate sexual remarks to a 16 year old student doing a high school co-op placement at the

courthouse and to a 21 year old woman who had attended his office in order to lay a private Information.

46. In describing the judicial standard of conduct to be considered, Madam Justice Hogan, who conducted the Inquiry, stated as follows:

> However, justices of the peace are very important judicial officers. Among other duties, they make decisions that affect a person's liberty such as bail, they determine whether process will issue, they decide whether or not to issue search warrants, and they preside in court. In fact, for many people their only contact with a judicial decision maker is with a justice of the peace. It is the justices of the peace who preside in court on matters such as parking tags, speeding tickets, by-law infractions, and provincial offences. These are the day-to-day type of "judicial" issues that confront most people. It is therefore quite probable that a great number of the public will form judgments of our justice system based on their experiences with a justice of the peace. Justice of the Peace Blackburn was a presiding justice of the peace which means that he carried out the full range of duties that could be assigned to a justice of the peace, including presiding in court.
>
> The Honourable Madam Judge Mary L. Hogan, Commissioner, *Report of a Judicial Inquiry Re: His Worship Leonard P. Blackburn* (1999) p. 4

47. In her recommendation that His Worship Blackburn be removed from the bench, Justice Hogan concluded, at pp. 6-7:

> When justices of the peace accept their appointments they can't help but appreciate that they are a part of the justice system and the public will have certain expectations of their behaviour while discharging their judicial duties.
>
> Being mindful of the principles set out above regarding judicial conduct, it is my opinion that Justice of the Peace Blackburn by his behaviour to the complainants in this Inquiry has – and here I adopt the words of Madam Justice MacFarland in the *Hryciuk* decision – "displayed a lack of regard for the dignity and honour of his judicial

position. His conduct must seriously diminish public respect and confidence in him and thereby severely impair his ability to function" as a justice of the peace.

I conclude that Justice of the Peace Blackburn's misconduct is such that it does not serve the best interests of the administration of justice in this province that he continue as a justice of the peace. Of particular significance to me in coming to this conclusion was the nature of the behaviour, the fact that it occurred in the court of his judicial duties and the age and circumstances of the young women to whom his behaviour was directed. I take this view despite the fact that he apologized, admitted the allegations thereby sparing the complainants from testifying and attended gender equity training. None of these factors can excuse his behaviour, nor restore the necessary public respect and confidence in him.

48. The 2003 case of Justice of the Peace G. Leonard Obokata involved sexual misconduct in the form of unwanted touching rather than comments. While at a judicial conference in Toronto, His Worship went out to dinner with a number of colleagues and consumed a large amount of alcohol. On the walk from the restaurant back to the hotel with a female colleague, His Worship reached over, grabbed one of her breasts and twisted his hand. When the colleague loudly protested, Justice of the Peace Obokata then repeated the action. On his account, he then immediately apologized.

49. Justice Cathy Mocha, sitting as a Commissioner of the Inquiry, described the seriousness of the admitted misconduct as follows:

There is no justification for Justice of the Peace Obokata's misconduct. It was serious, deliberate and it was repeated. Although there may have been some additional motivations for his actions there is one that is clear. The intent of the misconduct, at least in part, was to demean and show disrespect toward Justice of the Peace X both personally and generally as a woman. Such misconduct would not have occurred without some deficiency in his ability to respect women. Consequently, this misconduct does not just potentially cast doubt on his judgment

> concerning sexual assault cases, as argued by his counsel, but on any matter before him in which a woman is involved. It casts doubt on his respect for the law. It casts doubt on his morality. It casts doubt on his ability to feel empathy. Impartiality, integrity and morality are all essential elements of the administration of justice.
>
> The Honourable Madam Justice Cathy Mocha, *Commissioner, Report of a Judicial Inquiry Re: His Worship G. Leonard Obokata* (2003), p. 5

50. His Worship Obokata's disposition was a thirty-day suspension without pay and an order to complete a gender equity program. His Worship's immediate apology, his conduct of the proceedings and his demonstration of appreciation of the impact of his misconduct on the administration of justice were highlighted by the Commissioner for imposing a sanction short of the most serious disposition.

51. There are many aspects in the case before us which are distinguishable from the precedents cited. Here, we have found His Worship's misconduct to have been sustained and repetitive towards a range of women all having different roles in the justice system. He was the subject of findings of judicial misconduct at the earlier hearing and that hearing provided him a remedial opportunity for him to learn and accept that his conduct was not acceptable. Yet, he still fails to appreciate or acknowledge that there is a court hierarchy and the implications that hierarchy has on those who work in the justice system. He continues to be unable or unwilling to acknowledge the distinction between appropriate and inappropriate conduct in the workplace and the impact that inappropriate conduct and commentary has on both recipients and observers.

52. Our findings of His Worship's misconduct, which significantly included unwanted touching as well as sexualized comments may have related to events which pre-date the findings of the previous Panel, but from His Worship's testimony before us there was no convincing demonstration of any understanding, appreciation or assimilation of the insight one would expect, and that public confidence requires, in a judicial officer whose duties would include presiding over bail hearings where the charges could involve sexual offences.

53. We have considered the admissible portions of the Psycho-Social Assessment from Ralph Agard, Psychotherapist, dated February 16, 2015. Presenting Counsel submitted, and Mr. House, on His Worship's behalf, conceded that much of the report's content was inadmissible and therefore irrelevant. On the crucial issue of whether His Worship now appreciates the nature of his misconduct and is remorseful for it, we highlight Mr. Agard's comments on page 14:

> There is little doubt that Justice of the Peace Massiah is very remorseful. During our sessions he was emotionally demonstrative of deep personal thought processes when consideration was given to the fact that he might have unknowingly offended others. His strong family values and his commitment to his marriage, from a sociological perspective give credence to this observation. Documentation reviews indicate that he wrote apology letters to all those who it was alleged he had offended. He also did so to a particular individual in which there was no finding of guilt. We have determined from a behavioural perspective that this remorse is genuine particularly at the probability that he might have offended some of his workplace colleagues.

54. Regrettably, Mr. Agard's opinion that His Worship "might have unknowingly offended others", or that there is a "probability that he might have offended some of his workplace colleagues" does not acknowledge the evidence or our findings that "There is compelling evidence that proves a pattern of such conduct by His Worship towards women in the workplace which made them feel uncomfortable, uneasy, embarrassed and offended". Two Hearing Panels have found as fact that His Worship **did** engage in offensive conduct. Apology letters were tendered only to the women who were subjected to his conduct at the first location and only **after** the Hearing Panel had made their findings of misconduct. In this hearing, under cross-examination, His Worship said that he was "truly sorry for any inconvenience or awfulness that I may have caused to any person". Those words must be considered in the context of his overall evidence and demeanour throughout this proceeding, and our findings in that regard. No sincere, credible or meaningful apology was extended to the persons subjected to a poisoned work environment resulting from his misconduct at the Whitby courthouse.

55. Mr. Agard states further on page 14 of his assessment:

> When consideration is given to his humble beginning and lived experiences, it is easy to accept his assertion of regret. His regret rests in what he believes to be a humiliating of his family and his community notwithstanding his sense of guilt or innocence. Justice Massiah has completed an education program regarding sexual harassment of his own volition. This may very well be viewed as a self-imposed sanction or way of coping with his regret.

56. We note Mr. Agard's conclusion is that His Worship's regret rests not in relation to the impacts suffered by the women who were subjected to that conduct or the persons who observed his conduct at the Whitby courthouse, but on the humiliation of his family and community "notwithstanding his sense of guilt or innocence".

57. Although it is completely irrelevant, in our view, we express concern and discomfort with the observation made by Mr. Agard on page 15 of his assessment, wherein he states that His Worship "is a self-made individual whose immigrant and racialized minority lived experiences developed in him a sense of justice, forthrightness, and a dedication to service to the broader community". Race has nothing to do with this case, despite the frequent and troubling suggestions by Mr. Guiste, His Worship's co-counsel, that it did. (See our *Decision on the Motion Alleging Bias* (JPRC, May 29, 2014), para. 23.)

58. In addition, we have reviewed the letters of support contained at Tabs 14 to 23 of Volume III of His Worship's brief of documents in relation to the Penalty Phase.

59. We accept that His Worship has friends in the community who find him to be a person of integrity. However, we adopt the findings from the Canadian Judicial Council's decision in *Cosgrove* on the relevance of such letters of support:

> We are of the view that the opinions of individuals, be they judicial colleagues or otherwise, who do not have the benefit of the evidentiary record and a complete knowledge and appreciation of the issues before Council, will generally be of little assistance in determining whether

public confidence has been undermined to such an extent as to render a judge incapable of discharging the duties of their office.

Report of the Canadian Judicial Council to the Minister of Justice in the Matter of the Honourable Mr Justice Paul Cosgrove (March 30, 2009), at para. 57

60. The Hearing Panel in *Re Barroilhet: Decision on Disposition*, supra, referred to and applied the test established by the Supreme Court of Canada to determine whether removal from office is the appropriate disposition for judicial misconduct:

> In light of these findings, the Hearing Panel must determine whether the conduct of the justice of the peace in issue is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the justice of the peace, or of the public in its justice system, would be undermined, rendering the justice of the peace incapable of performing the duties of his or her office.

61. Presenting Counsel referred us to the words of Mr. Justice Sydney Robins from the *Williams Inquiry* to assist us in determining whether His Worship Massiah's conduct warrants the ultimate sanction of removal:

> Every judge in his judicial and non-judicial activity has a responsibility to preserve and enhance public confidence in the administration of justice. He serves as an exemplar of justice [...] and confidence in our system of justice in large measure depends on him. When he engages in misconduct, the magnitude of the misconduct may be measured by the extent to which he has impaired the confidence of the public in himself as a judge and in the administration of justice.
>
> [...]
>
> There must be allowance for forgivable error; human frailties and fallibilities must not be forgotten; none of us can attain the ideal. To warrant removal misbehaviour should be more than indiscretion or error in judgment. There are no tests of misbehaviour capable of exact definition. Nor are there standards of judicial conduct which admit

> of quantitative measurement. Each case must ultimately depend on the nature of the conduct, all the facts surrounding it, its effect on the judge's ability to perform his official duties, and the extent to which it has impaired public confidence in the judge and in the administration of justice.
>
> The Honourable Mr. Justice Sydney L. Robins, *Commission of Inquiry re: Provincial Judge Harry J. Williams* (1978), quoted in Hon. J. MacFarland, *Report of Judicial Inquiry re: His Honour Judge W.P. Hryciuk* (1993), p. 55

62. Contrary to the submissions made by counsel for His Worship, the sexually inappropriate misconduct of His Worship Massiah, a judicial officer, towards women in the courthouse is not a case where there was indiscretion or error of judgment which should be considered to be an allowable result of human frailty or fallibility.

63. The evidence in this hearing from people who work at the Whitby courthouse showed the corrosive impact that sexual harassment by judicial officers can have on public confidence. We accept the submission from Presenting Counsel that the Washington Supreme Court's statement in the *Deming* case is applicable here:

> His conduct has degenerated the respect of the public for the judiciary. Applying the evidence to the above factors we conclude that Judge Deming has demonstrated a lack of those personal and professional qualities which are necessary to qualify one to hold judicial office in the State of Washington. The nature, extent and frequency of the acts of sexual harassment, all involving his judicial position, reflect an unacceptable pattern of behavior. This misconduct occurred both in and out of the courtroom, often in public situations. He exploited his official judicial position for which there can be no excuse. Nothing in the record suggests that additional time on the bench would result in an end to this inappropriate conduct.
>
> *In re the Matter of Honourable Mark S. Deming, Judge, Pierce* County District Court No. 1, 108 Wash.2d 82, 736 P.2d 639 (Supreme Court of Washington, 1987)

64. When we consider the extent and duration of His Worship Massiah's misconduct, and his testimony, before us, which demonstrated a complete lack of insight into the gravity of his misconduct even after a previous public hearing, we conclude that the dispositions set out in paragraph 11.1(10) (a) to (f) are not sufficient to restore public confidence in His Worship Massiah or in the judiciary in this case.

65. The sexual harassment of women in the courthouse by His Worship Errol Massiah, who has demonstrated through his testimony before us a refusal or inability to accept that sexually inappropriate conduct by a justice of the peace towards women in the workplace is not acceptable, is so manifestly and profoundly destructive of the judicial role and integrity in the judiciary that public confidence requires him to be removed from office.

66. His Worship Massiah has become incapacitated or disabled from the due execution of his office by reason of judicial misconduct incompatible with the due execution of his office. We find that the only disposition which can restore the public confidence in the integrity of the judiciary and in the administration of justice is a recommendation to the Attorney General that His Worship Errol Massiah be removed from office in accordance with section 11.2 of the *Justices of the Peace Act.* Accordingly, we make that recommendation.

Date: April 28, 2015

HEARING PANEL:

The Honourable Deborah K. Livingstone, Chair

His Worship Michael Cuthbertson

Ms. Leonore Foster, Community Member

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, C. J.4, AS AMENDED

Concerning a Complaint about the Conduct of Justice of the Peace Errol Massiah

Before: The Honourable Justice Deborah K. Livingstone, Chair
Justice of the Peace Michael Cuthbertson
Ms. Leonore Foster, Community Member

Hearing Panel of the Justices of the Peace Review Council

DECISION ON THE REQUEST FOR A RECOMMENDATION FOR COMPENSATION OF LEGAL COSTS

Counsel:

Ms. Marie Henein Mr. Matthew Gourlay Henein Hutchison, LLP	Mr. Ernest J. Guiste E. J. Guiste Professional Corporation Mr. Jeffry A. House
Presenting Counsel	Counsel for Mr. Errol Massiah

Public Hearing Re His Worship Errol Massiah

Decision on the Request for a Recommendation for Compensation of Legal Costs

PUBLICATION BAN:

On June 11, 2014, this Panel made an order that the names of all witnesses who appear in any of the *facta* or motion materials or application records in this hearing shall not be published, nor shall any information that might identify them be published. Names of witnesses have been redacted.

Background

1. Following a public hearing under section 11.1 of the *Justices of the Peace Act,* on April 28, 2015, this Panel made a recommendation to the Attorney General under subsection 11.1(10)(g) of the *Act* that (then) Justice of the Peace Errol Massiah should be removed from office. On April 29, 2015, pursuant to section 11.2 of the Act, by order of the Lieutenant Governor in Council, former Justice of the Peace Massiah (Mr. Massiah) was removed from office.

2. The recommendation of this Panel was the result of our conclusions, following our consideration of the evidence presented during the hearing, that (then) Justice of the Peace Errol Massiah had engaged in judicial misconduct. Our decision including those findings was released on January 12, 2015.

3. Mr. Massiah has asked this Panel to make a recommendation that he be fully indemnified for his legal costs.

4. Pursuant to subsection 11.1 (17) of the *Justices of the Peace Act,* the Panel, which includes a member of the public, "may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the hearing". The amount of allowable costs is limited to "a rate for legal services that does not exceed the maximum rate normally paid by the government of Ontario for similar services." (subsection 11.1(18), *Justices of the Peace Act*).

5. Written submissions were invited from the parties in relation to the issue of compensation. Those submissions and the Statement of Accounts for each of the two counsel for Mr. Massiah have been reviewed. The amount of compensation requested for legal services provided by Mr. Guiste is $517,055.81 plus $5,175.94 for disbursements. The amount of compensation requested for Mr. House is $93,916.84 including disbursements of $27.97.

Analysis and Conclusion

6. The Panel concludes that it will make no recommendation for compensation for the reasons below; to do otherwise would be inappropriate in the circumstances of this case.

7. The Panel agrees with the approach taken in recent jurisprudence from both the Justices of the Peace Review Council and the Ontario Judicial Council in concluding that, where there has been a finding of judicial misconduct, a recommendation for compensation does not automatically follow, and it is only in exceptional circumstances that the public purse should bear the legal costs of a judicial officer who has engaged in judicial misconduct.

8. The Panel agrees with the submission from Mr. Massiah that the decision on compensation in *Re Foulds* (JPRC, July 21, 2013), a decision of a Hearing Panel of the Review Council, is not binding on us. However, the Hearing Panel in that case was governed by and applied the same legislative framework as we must here. That Panel made a recommendation for compensation in circumstances where the justice of the peace admitted judicial misconduct in an Agreed Statement of Facts, provided letters of apology to the parties involved, and had 14 years as a justice of the peace with no history of findings of judicial misconduct.

9. The circumstances in *Re Foulds,* differed significantly from those before us. However, the Panel in *Re Foulds* provided some "general guidance" on how the provisions regarding compensation should be applied. We find this guidance to be helpful and persuasive. That Panel stated as follows at paras. 52-62:

> [52] While addressing the issue of costs in the matter before us, we aim to also provide some general guidelines.

[53] Certainly respondents to these hearings should be encouraged to retain counsel.

[54] In this case, counsel assisted with the preparation of an Agreed Statement of Facts, a feat that might not otherwise be accomplished without the benefit of counsel. That alone saved considerable public expenditure.

[55] The participation of counsel also insulates complainants and other witnesses from cross-examination by the very respondent about whom they complained, thereby amplifying procedural fairness and the overall dignity of the process.

[56] Although judicial members of a panel are screened for any personal or professional connection to a respondent, the addition of counsel for a respondent avoids the unseemliness of a judicial officer directly pleading his case to his peers.

[57] In instances where the alleged misconduct is referred to a public hearing, and ultimately dismissed, there is a very compelling argument for the recovery of all costs (in accordance with subsections 11.1(17) and 11.1(18) of the *Act*) as the public's confidence has not been undermined in the least.

[58] In cases where, pursuant to subsection 11.10(g), a recommendation to the Attorney General is made that a justice of the peace be removed from office, we doubt whether costs should ever be recommended, except in the most unusual of circumstances.

[59] When a panel recommends removal from office it means that nothing short of removal is 'enough' to restore the public's confidence. That very public would unlikely countenance the awarding of costs for such extreme misconduct.

[60] In other cases where there is a finding of misconduct, there is a spectrum of cost recommendations that might arise, all subject to the limitations in subsections 11.1 (17) and 11.1 (18) of the *Act*.

[61] In cases where no misconduct is admitted, but where it is eventually established by the Panel, then costs might still be warranted but on a lower scale.

[62] Some factors that might be weighed are these:

a) the severity of the misconduct;

b) the complexity of the hearing;

c) the conduct of the justice of the peace in the course of the hearing, including whether the justice of the peace prolonged or expedited the process;

d) the nature of the disposition(s);

e) whether public funds were lost as a result of the misconduct;

f) whether there had been previous findings of misconduct made against the justice of the peace; and,

g) whether the conduct in question relates to a judicial function or impacts judicial independence.

10. The Panel in *Re Foulds* stated that the factors it delineated "would serve the public interest by ensuring that its judicial officers are fairly and wholly represented, but not at the cost of the administration of justice as a whole". (Re Foulds, supra, at para. 64)

11. The Hearing Panel in *Re Phillips* (JPRC, November 4, 2013), which post-dated Re Foulds and where there was a recommendation for removal from office, declined to recommend compensation. The Panel stated, at paras. 8-11:

[8] At the outset, we note that we are not ruling on the competence of Justice of the Peace Phillips' counsel or whether he should be compensated. He performed admirably and with great skill in a difficult case. He should be compensated, and this should be done, as would normally be the case by his client. She has both a moral and legal obligation to him.

[9] Our task is narrower: should we recommend to the Attorney General that compensation be awarded to Justice of the Peace Phillips?

[10] All of the factors militate against such a recommendation. The misconduct was severe, and we determined that the only way that public confidence in the administration of justice could be restored was to recommend removal from office. Justice of the Peace Phillips created this situation by her misconduct; she was ultimately removed from office because of her misconduct. We have considered the submission that due to the illness of one of our Panel members extraordinary circumstances exist. Our review of the transcript reveals that the hearing was going to be adjourned in any event. On the return date, either a further witness would be called and then submissions as to whether judicial misconduct had occurred would proceed; or, the witness would not be called and counsel would proceed directly to submissions. Under either scenario, an adjournment would have been needed to permit counsel to prepare arguments and case law prior to making their submissions on the evidence.

[11] We are of the firm view that the average reasonable Canadian fully apprised of all the facts would be shocked if any compensation were awarded. The Panel's decision is that no recommendation will be made to the Attorney General for compensation.

12. The Hearing Panel in *Re Johnston* (JPRC, August 19, 2014) also declined to recommend compensation, even though the disposition was not a recommendation for removal, but rather a seven-day suspension. The Panel stated at p. 10:

> Given the gravity of the misconduct, and in particular that the misconduct occurred while in the performance of judicial duties with significant effect on the administration of justice, members of the public and the public purse, we are of the view that this is not an appropriate case for a recommendation for costs.

> In deciding not to award costs we emphasize that our decision is not intended to be punitive. It is merely a reflection of the unique features of the matters before us, and the discretionary nature of any recommendation.

13. Similarly, the Ontario Judicial Council Hearing Panel in *Re Chisvin* (OJC February 22, 2013), in the exercise of its discretion pursuant to s. 51.7 (4) of the *Courts of Justice Act*, declined to order compensation. In that case Justice Chisvin admitted judicial misconduct, and the Panel determined a reprimand was the appropriate sanction. The Panel stated at paras. 4-6:

> [4] As we noted in our reasons for disposition, Justice Chisvin is to be commended for facing up to the fact that his conduct fell below the required standard. However, it remains that he did fall below that standard and we did make a finding of misconduct.
>
> [5] Taking into account all the circumstances of this matter, it is our view that the public purse should not be required to bear the cost of his legal representation.
>
> [6] Accordingly, the request for compensation is dismissed.

14. We find the reasoning on compensation of the Hearings Panels in *Re Phillips, Re Johnston and Re Chisvin* to be persuasive.

15. In considering the factors from *Re Foulds:*

    a) In this case the misconduct was serious, such that a recommendation for removal was deemed the only disposition which would restore public confidence in the judiciary.

    b) The hearing was somewhat complex as there were a number of allegations involving a number of different women in the justice system.

    c) Mr. Massiah's conduct in advancing many pre-hearing motions, which were without merit, frequently appeared to be a deliberate attempt to prolong the process. This caused public resources to be unnecessarily expended.

d) Mr. Massiah has argued that his case has raised issues transcending the parties and that are in the public interest, and that, therefore, his legal costs should be paid by public funds. We disagree. There are no "most unusual" circumstances in this case which could justify a departure from the general principle that no compensation for legal costs should generally be recommended where the Panel has concluded that the only disposition that would restore public confidence is removal from the bench. We are also mindful that the primary public interest of the judicial disciplinary process is to preserve and restore public confidence in the judiciary and in the administration of justice.

e) No public funds, other than those expended on this unduly elongated hearing process, appear to have been lost as a result of Mr. Massiah's misconduct.

f) There were prior findings of similar misconduct made against Mr. Massiah. The circumstances whereby findings in this hearing predated the prior findings was a novel situation before this Council, but the legal issues raised in that regard were not significantly complex.

g) The misconduct that has been established has nothing to do with the concept of judicial independence. The acts had little to do with Mr. Massiah's exercise of his judicial function. Most incidents constituted conduct of a judicial officer towards women in the courthouse. In some instances, he displayed physical reactions towards female defendants while he was presiding in the courtroom. His judicial misconduct did not relate to the exercise of judicial discretion or judicial decision-making. In such circumstances, there are no judicial independence related concerns associated with the expectation that, like any other person whose wrongful actions are the reason for a legal proceeding against him or her, this former judicial officer should pay his own legal fees.

16. We acknowledge Mr. Massiah's submission that financial security is a component of judicial independence. However, we agree with the submission of Presenting Counsel that a decision by this Panel against recommending compensation for his legal costs does not violate the principle of financial security that is a component of judicial independence.

17. Presenting Counsel submits, and we agree, that the essence of judicial independence is that a judicial officer cannot be removed from office without cause and that the Executive of government cannot **arbitrarily** (emphasis added) interfere with a judicial officer's salary or pension. Losing one's livelihood as a judicial officer after cause has been established by an independent judicial discipline body to remove him from office does not unjustifiably interfere with judicial independence; similarly a decision by that independent judicial discipline body that the former judicial officer should pay for the legal costs he incurred because of his judicial misconduct does not unjustifiably interfere with his financial security. Put another way, requiring justices of the peace to pay their own legal bills in a judicial disciplinary proceeding that has resulted in a finding of judicial misconduct and a removal from office does not compromise the principle of judicial independence.

18. Although Mr. Massiah suggests that section 20 and subsection 11.1 (17) of the *Justices of the Peace Act* provide the "statutory articulation of the constitutional tradition" that the Attorney General is responsible for indemnifying judicial officers for the cost of their legal defence in judicial misconduct cases, we disagree.

19. In fact, the judicial discipline process has been established to preserve and restore the confidence of the public in the judiciary. Compensating someone for his legal costs, after he has been found to have engaged in misconduct so egregious that it warrants termination of his tenure as a judicial officer could hardly restore public confidence, particularly in these circumstances where Mr. Massiah has been receiving full salary throughout the proceedings even though he has not been assigned judicial duties since August 23, 2010. If in such circumstances the public were expected to bear the expense of the legal costs resulting from such judicial misconduct, the objective of the judicial discipline process, restoring public confidence in the judiciary, would be undermined.

20. We also reject Mr. Massiah's submission that the principle of "judicial immunity" has any application to this determination. Section 20 of the *Justices of the Peace Act* relates to immunity from civil liability for acts carried out in the course of their judicial duties. It does not protect Mr. Massiah from accountability for his misconduct through the discipline process within the same *Act*, nor does it create any "right" for him to be compensated for his legal fees.

21. Similarly, we reject that there is any "right" to public funding of his legal fees incurred by his judicial misconduct established in the international conventions cited by Mr. Massiah. Mr. Massiah was accorded his right to procedural fairness and his right to retain counsel to represent him. It does not flow from international conventions that a judicial officer who has engaged in judicial misconduct should automatically have his legal costs paid. On the issue of compensation, the cited international conventions are completely irrelevant in this proceeding.

22. Mr. Massiah contends that he did not prolong the proceedings; he alleges that he made admissions early in the investigation process. In fact, there were no formal admissions made that dispensed with the need for any witnesses to be called. He also submits that the proceedings could have been streamlined if the Panel had ordered a pre-hearing conference pursuant to Rule 14 of the Procedures. As there was no convincing suggestion by Mr. Massiah at any juncture of the proceedings that the narrowing of issues or a possible settlement were realistic possibilities, the Panel declined to order a pre-hearing conference. Presenting Counsel indicated to the Panel that a pre-hearing conference would not resolve issues. It was also evident through the course of the hearing that a pre-hearing conference would not have benefitted the process. Mr. Massiah contested all of the allegations.

23. Once the hearing of evidence commenced, the hearing was conducted appropriately and effectively by Mr. Massiah's co-counsel, Mr. House.

24. We reject Mr. Massiah's assertion that, in relation to numerous pre-hearing motions, his defence was "clearly well-grounded on recognized and viable procedural grounds". We agree with and reiterate below examples included in Presenting Counsel's submissions which highlight a number of the frivolous motions brought by Mr. Guiste on behalf of his client:

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(i) The Applicant's counsel, Mr. Guiste, brought a belated motion for a publication ban which required an adjournment of the hearing. It was based on the Applicant's dissatisfaction with certain media articles which had already been published, and about which the Panel had no ability to do anything. In the same motion, he sought both a publication ban and an order that the media publish articles that were fair. In other words, the Applicant sought relief that was factually and legally impossible to grant.

This motion also involved a baseless allegation that various agents of the Attorney General, as well as Presenting Counsel, were actively pursuing the removal or reputational destruction of Mr. Massiah as a justice of the peace. The Panel noted that "Mr. Guiste's position that Presenting Counsel have been or are engaged in an attempt to undermine the judicial independence of His Worship illustrated a misunderstanding of the role of Presenting Counsel." This was only one of the many allegations made over the course of this hearing against Presenting Counsel, the Panel, the Registrar, and even the court reporter. *Decision on the Motion to Ban Publication* (JPRC, April 11, 2014).

(ii) The Applicant's counsel, Mr. Guiste, brought a motion for recusal of the Hearing Panel on account of a reasonable apprehension of bias. The motion was entirely baseless, and was justifiably characterized as "frivolous" in the Panel's decision. The Panel also observed that the Applicant's motion contained assertions that were "completely offensive", "egregious", and "atrocious", such as the absurd allegation that Presenting Counsel had somehow colluded with the Hearing Panel over the issue of retaining independent counsel: *Decision on the Motion Alleging Bias* (JPRC, May 29, 2014).

(iii) Mr. Guiste expressed a concern that Mr. Gover's retainer as Independent Counsel to provide a legal opinion would in some way result in an unfair hearing. He stated: "It's my duty to say look, this fellow has too close of a relationship to Presenting Counsel and to Mr. Hutchison and the Ministry of the Attorney General." He

indicated that it was a serious matter. He conceded that he had not checked the case law to see if it would support his allegation. A date was scheduled for motion materials to be filed. No motion was ever brought. *Decision on Threshold Jurisdiction Question* (JPRC, June 6, 2014).

(iv) Following release of the Divisional Court's decision dismissing the application for judicial review of the prior Hearing Panel's findings, the Applicant persisted in trying to re-litigate (under the auspices of the abuse of process motion) a number of issues conclusively determined by the Divisional Court: *Decision on Grounds to be Argued on the Motion Alleging Abuse of Process* (JPRC, June 19, 2014).

(v) Mr. Guiste served and filed at least three Notices of Motion seeking disclosure and particulars, in respect of material that was either irrelevant or already in his possession. For instance, he complained that the witness contact information he had been provided was insufficient, but then acknowledged in submissions that he "had to date made no effort to speak with the witnesses." He also demanded witness statement summaries even though he was already in possession of verbatim transcripts: *Decision on the Motion for Disclosure and Particulars* (JPRC, June 12, 2014).

(vi) On November 10, 2014, after the Panel had taken the matter under reserve, Mr. Guiste filed a Motion for Directions re Evidence making irrelevant and belated claims about evidence led before the Panel months earlier. In dismissing the Motion, the Hearing Panel made an order "to control and prevent any further abuse of this process" that Mr. Guiste cease trying to re-open the hearing and stop sending unsolicited correspondence to the Panel: *Decision on the Applicant's Motion for Directions* (JPRC, November 18, 2014).

(vii) In this same period of time post-hearing, Mr. Guiste filed a Motion attempting to once again argue the jurisdictional points raised by the earlier motion, which remained under reserve. He also raised

> some new jurisdictional arguments, which the Panel characterized as "frivolous and meritless". The Panel went on to note "that His Worship Massiah's decisions to bring meritless motions to try to reargue his case while the Panel is deliberating on its decisions on the hearing could be perceived by the public as consistent with a deliberate attempt to delay the Panel in reaching a final decision." The return date originally scheduled for delivery of the Panel's decision had to be adjourned as a result of the time lost dealing with the Applicant's improper attempts to reargue the case: *Decision on His Worship's Motion for Leave to Have the Hearing Panel Entertain Further Submissions* (JPRC, November 19, 2014).

25. Mr. Massiah's conduct of this proceeding is considered in the context of the factors referred to in *Re Foulds*, namely that in cases of serious misconduct, compensation should be the exception rather than the rule even when the defence was conducted entirely appropriately.

26. In our view, awarding compensation for legal fees in a judicial disciplinary process where the proceedings were conducted in the manner described above would be an affront to the public confidence in the judiciary and in the administration of justice. His conduct of the case did nothing to expedite the proceedings; in fact, we have found it prolonged the hearing unduly.

27. Mr. Massiah committed serious misconduct that required removal from the bench to restore public confidence in the judiciary. This was not a case involving the most unusual of circumstances that would support a conclusion that there should be a recommendation for compensation after a finding of judicial misconduct and a removal from office.

28. In our view, therefore, ordering compensation in this case is wholly and completely inappropriate.

29. We have decided against making a recommendation for any compensation of Mr. Massiah's legal costs in this case. The application for a recommendation for compensation of legal costs is dismissed.

30. The conduct of Mr. Massiah's lawyer, Mr. Guiste, is not relevant to this decision. We have set out concerns about Mr. Guiste's conduct in an Addendum.

Dated: June 16, 2015

HEARING PANEL:

The Honourable Deborah K. Livingstone, Chair

Justice of the Peace Michael Cuthbertson

Ms. Leonore Foster, Community Member

Public Hearing Re His Worship Errol Massiah

ADDENDUM

Conduct of Mr. Guiste

1. In our decision regarding Mr. Massiah's request for a recommendation for compensation of his legal costs, reference was made to the conduct of Mr. Massiah during the proceedings. That conduct encompassed procedural steps taken by Mr. Massiah, through one of his counsel, Mr. Guiste. While we recognize that Mr. Guiste would have been acting on the instructions of Mr. Massiah, nonetheless Mr. Guiste, as a lawyer, must bear responsibility for the inefficient and unprofessional manner in which he filed submissions, continued to amend submissions, and contributed to delay in the progress of the proceedings.

2. During the hearing, on more than one occasion, after the Panel had reserved on its decision, Mr. Guiste took steps that interrupted the Panel during its deliberations and raised matters that should properly have been raised during the hearing, if his client sought to raise them.

3. During the course of the proceedings, in particular during the numerous pre-hearing motions, this Panel was taken aback by a number of egregious inflammatory comments that Mr. Guiste made to the Panel. His comments contained inappropriate, baseless allegations and/or inferences about this Panel, Presenting Counsel and other participants in the justice system. We attempted to focus him on the matters for adjudication before the Panel and to make him aware of the inappropriateness of his comments so that he would cease from his persistent incivility.

4. In the context of a public hearing that was underway to preserve confidence in the administration of justice, Mr. Guiste frequently made inappropriate comments that implied impropriety and/or unprofessional conduct on the part of the Panel, previous Presenting Counsel Hunt, Presenting Counsel Henein, the Attorney General and others involved in the justice system, and then he added a comment afterwards as if to suggest that it was not his intention to make such accusations. His conduct during this hearing process lacked courtesy, respect and decorum and gave rise to a concern that his conduct and comments could bring the administration of justice and the legal profession into disrepute.

5. The transcripts in this proceeding provide a more complete picture of how Mr. Guiste conducted himself during this process. Several examples of inappropriate commentary are set out as follows:

   (1) On November 4, 2013, the Panel confirmed the next motion date that had been previously agreed to and referred to the undertaking by His Worship's co-counsel that if one could not attend, they would make arrangements for the other to attend. Mr. Guiste said, "I guess in the circumstances, I would have to ask you in accordance with the client's wishes, that he be removed as counsel." The Panel sought to confirm whether His Worship had terminated his retainer with Mr. Bhattacharya. Mr. Guiste said, "Well, I think that the presenting counsel and the Tribunal would be exceeding their liberties, given that he has counsel. And I can inform the panel, if they so wish, that, yes, his retainer in these proceedings is no more, because it would be incompatible with the discharge of his duty in light of the argument of inadequate representation."

   His Worship subsequently said, "On November 11, we are due to have a meeting with co-counsel, Mr. Bhattacharya, at which point in time that the Justices of the Peace Review Council, and to some extent this Panel will then be advised as to whether or not Mr. Bhattacharya will be retained, or continue to be retained on the record. Notification will come at that time. We are currently in discussion regarding that process. As it stands right now, he is still currently co-counsel."

   (2) On November 4, 2013, Mr. Guiste stated to this Panel, "What I am dealing with here, primarily, is the conduct of the body who brought the complaint. And what I am saying is, look, you cannot be a panel that acts in accordance with the law and close your eyes to the reality that those complaints were not properly brought in law. Otherwise, as the police officers refer to some of our other tribunals, they refer to them as "kangaroo courts". What is a kangaroo court? A kangaroo court is, I'll submit to you, is one that simply is a lapdog for the masters in terms of what they wish to accomplish."

(3) On November 4, 2013, Mr. Guiste further stated to this Panel:

MR. GUISTE: This is a Tribunal of Law, a respected Tribunal. And I say to each and every one of you on this panel, that it is integral that you understand what I am saying....And the law from the Supreme Court of Canada is very helpful here. And I will agree that it's binding on you. But in saying that, I am also saying to you that - - Ms. Blight, you don't think that it's worthy of writing this?

MS. BLIGHT: The last note that I wrote, sir, is "kangaroo court".

MR. GUISTE: All right. I said quite a bit after that, I noticed that you've just been sitting there."

(4) On November 4, 2013, Mr. Guiste stated, "...you have the Ministry of the Attorney General and you have the Justices of the Peace Review Council... there appears to be either intentionally or unintentionally, objective of seeking to, 'if we can't get him out by legitimate means in accordance with law, then we will so taint his reputation so that he will be unfit'." He further explained his comments by stating: "Intentionally or unintentionally it appears to me that the Ministry of the Attorney General and the Attorney General for Ontario have decided in their wisdom that, 'If we cannot get rid of Justice of the Peace Massiah within the bounds of the law – that is, with respect to legitimate complaints brought in accordance with the statute –then we will seek to remove him from office by virtue of deleterious effects of the publications by virtue of the nature of the allegations'."

(5) On April 9, 2014, Mr. Guiste referred to the complainant whose complaint was the subject of the 2012 hearing that resulted in findings of judicial misconduct by Mr. Massiah. Despite findings by that Hearing Panel in 2012, based on the evidence presented before it, Mr. Guiste stated to this Panel that, "So for example, if Ms. [redacted] decides that she doesn't like His Worship and she decides, okay, well, what I'm going to do is I'm going to round up five people and I'm going to record their – whatever they have to say and send it to the Justices of the Peace Review Council, that calls into question the integrity of the process."

(6) Mr. Guiste made comments to suggest that this Panel was discriminating against Mr. Massiah and his counsel during this process.

On April 9, 2014, Mr. Guiste said, "But the writing requirement is a very serious one, and all I'm saying is you can't suck and blow. You can't say on your website, this has to be in writing, signed letter. You can't say in your annual report, and when this African Canadian Justice of the Peace comes, oh the law is changed for you. It doesn't look good. It's not right."

On May 28, 2014, after the Chair of the Panel said, "Thank you for that speech" to Mr. Guiste, he responded, "To a man of African-Canadian descent, it strikes at the – what is that word? A stereotype of the black man on a soap box giving speeches on the street corner." As we remarked at that time, the Panel was offended at the suggestion that we are racist. Mr. Guiste responded by saying, "I am suggesting to you that the context in which that was said, "Thank you, Mr. Guiste, for that speech," I'm a man of African-Canadian descent and I'm very familiar with my history, and that when individuals of European descent in power want to exert their power, it is not uncommon to resort to that type of stereotyping."

(7) On April 9, 2014, Mr. Guiste said, "So because the Ministry of the Attorney General and the Government of Ontario is paying Presenting Counsel's salary, because they want this rammed through and dealt with, done, guilty. That's not why we're here."

(8) On April 9, 2014, Mr. Guiste showed no respect for the complaints process, the Justices of the Peace Review Council or the seriousness of the allegations facing Justice of the Peace Massiah when he said: "In other words, does the Justices of the Peace Review Council have to deal with any garbage that is sent to it? Or does it have a duty to look at it intelligently and say, hmmm, all right well, why don't you tell each of these individuals to write us a letter, signed letter and we will deal with it? That is for you to ponder and I think it makes an abundance of sense that you just don't have garbage in and garbage out."

(9) On April 9, 2014, Mr. Guiste diminished the seriousness of the allegations before the Hearing Panel when he said, "I'm not sure what Mr. Massiah did, but from what I know, he never raped anybody."

(10) On April 9, 2014, Mr. Guiste stated in an insulting, demeaning tone to the Panel Chair, "I think you are fundamentally misunderstanding. I would ask that you work a little harder and try to understand me. I'm going to speak very slowly."

(11) The Panel heard on April 28, 2014, that Mr. Guiste had contacted Mr. Gover who was retained as independent counsel to give the Panel legal advice on particular questions of law. Mr. Guiste telephoned Mr. Gover and asked him if he saw anything wrong in accepting the retainer to advise the Panel.

Mr. Guiste also suggested that there was a concern about the objective propriety of Mr. Gover acting as independent counsel. Mr. Guiste indicated that it seemed to him "that too many of the players are too loosely aligned to each other and I think a reasonable third member person in the public, looking at this, being informed of

all of the facts and circumstances, would say wait a minute, that doesn't look very good."

Later in the proceeding, he stated that he had not yet looked at the case law to support his allegation and "if at the end of the day it doesn't pan out, I might withdraw it." No motion was brought in that regard.

(12) On May 28, 2014, Mr. Guiste suggested that there had been inappropriate contact between the Panel and Ms. Henein, Presenting Counsel, and he stated, "...what I'm suggesting to this Panel is the rules are very clear that there ought not to be communication and decisions made in the absence of the subject Justice of the Peace. This was one made in his absence. Whether you and Ms. Henein, presenting counsel, had any communication or not I could never know that. But I simply have to advocate as lawyer for Mr. Massiah that the law requires this appearance of fairness and clarity ... So let me be clear. I'm just an advocate. I don't know who did what, what happened; I can't know that, and that's not relevant. What's relevant is the appearance, and that's what I've been saying consistently. A decision was made on a fundamental point in his absence without any input ... A reasonable person, sir, looking at these circumstances, it is highly suspect, and it is a violation of the enabling procedures."

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SUMMARY

6. In our view, comments such as those cited above, were unprofessional and inappropriate and exemplified conduct which did nothing to advance Mr. Massiah's defence. We did not consider the inappropriate conduct or comments of Mr. Guiste in deciding the issues in this hearing or in our reasons on the request regarding compensation. However, this judicial disciplinary process plays an important role in preserving and restoring public confidence in the administration of justice. Such conduct and comments from a lawyer cannot be overlooked. This Panel directs the Registrar to provide a copy of this Addendum to the Law Society of Upper Canada for its consideration.

Dated: June 16, 2015

HEARING PANEL:

The Honourable Deborah K. Livingstone, Chair

Justice of the Peace Michael Cuthbertson

Ms. Leonore Foster, Community Member